

Title 3

PERSONNEL

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Chapter 3.04

EMPLOYEE RESIDENCE REQUIREMENTS

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3.04.010 Employee residence requirements—Exceptions.

3.04.010 Employee residence requirements—Exceptions.

A. All new employees of the metropolitan government, including employees of the board of health, board of hospitals and the board of education shall be residents of the State of Tennessee or become residents of the state within six months of employment as a prerequisite to employment with the metropolitan government. The residency requirement shall apply to all temporary, seasonal, civil service, non-civil service and professional employees of the metropolitan government. The residency requirement shall not apply to consultants or independent contractors employed by the metropolitan government nor to employees of the metropolitan government hired prior to June 20, 1978.

B. Should an employee desire to live outside the State of Tennessee, he shall apply to his respective civil service commission or, in the case of non-civil service employees, to his department head for a hardship waiver. The waiver shall be granted only in extraordinary situations involving the health, safety or welfare of the employee or a member of his immediate family. (Ord. 94-1078 § 2, 1994)

Chapter 3.08

METROPOLITAN EMPLOYEE BENEFIT SYSTEM GENERALLY

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3.08.010 General definitions.

The following definitions shall apply to both Division A and Division B.

For the purposes of Chapters 3.08 through 3.44, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Average Earnings.

1. "Average earnings," when calculating pensions under Chapters 3.32, 3.33, 3.36 and 3.37, means an arithmetic monthly average of a metropolitan employee's earnings during the period which contains the sixty consecutive months of credited service which produces the highest average. Periods during which the member is not credited with credited service will be disregarded for the purposes of determining whether months of credited service are consecutive. If a member has not been employed for a period which contains sixty months, then his average earnings will be based on his earnings during all months of employment with the employer for which credited service

was earned. Notwithstanding the foregoing, credited service for periods of disability under Chapters 3.28 or 3.29 shall be disregarded for purposes of this section.

2. "Average earnings," when computing pensions under Chapters 3.28 or 3.29, means the arithmetic average of a metropolitan employee's earnings during the period which contains twelve consecutive months of credited service which produces the highest average. Months during which a member is not credited with full credited service will be disregarded for the purpose of determining whether months of credited service are consecutive. The earnings for any month shall be: (a) the actual earnings paid for the month in which the member is compensated for eighty or more hours of work; or (b) the actual earnings paid for the month in which the member is compensated for less than eighty hours but for which the member has unauthorized leave without pay which when added to the hours actually compensated, equals eighty or more hours for the month. If a member has not been employed for a period which contains twelve consecutive months, his average earnings will be based on his compensation during all the months of employment for which there is full credited service. Notwithstanding the foregoing, authorized unpaid leaves of absence shall be disregarded for purposes of this section if the authorized unpaid leave of absence produces a month for which the member is compensated for less than eighty hours of work.

3. The amendments made to this definition of "average earnings" by Ordinance 97-1018 shall have retroactive application to those disability or service pensions that have a benefit commencement date of January 1, 1996 or later.

"Average excess earnings" means the average of excess earnings determined for the same calendar years that average earnings are determined.

"Beneficiary" means the person last designated by the member in writing to the employee benefit board to receive such benefits, if any, as may be payable upon the death of such member.

"Board" means the employee benefit board created in accordance with Section 13.02 of the Metropolitan Charter.

"Correctional officer" means an eligible employee who is a correctional officer in the Davidson County sheriff's department as determined in accordance with the qualifications of a correctional officer prescribed by applicable rules and regulations of the civil service commission and having direct contact with inmates as a regular and necessary part of the employee's duties and responsibilities.

"Credited employee service" means the sum of prior employee service and current employee service.

After July 1, 1986, if an employee subject to this plan terminates employment, and is entitled to payment of any

retirement benefit under this plan, other than a refund of all or a portion of his contribution to the fund, he may elect prior to his termination of employment to receive service credit for that period of time spent in active military service in the Armed Forces of the United States, subject to a maximum of four years of total credit; provided, however, that the employee (1) was employed by metropolitan government immediately prior to entry into active military service and immediately returned to employment by metropolitan government upon discharge from such service, (2) was honorably discharged, and (3) that the employee does not receive retirement credit in any other Tennessee retirement system for his military service that results in a duplication of benefits.

As of January 1, 1998 any member that dies, who has taken FMLA leave within twelve months of the member's death, will receive a maximum of three months' credited service for the amount of time that the member was on approved family medical leave.

"Credited police and fire service" means the sum of prior police and fire service and current police and fire service.

After July 1, 1986, if an employee subject to this plan terminates employment, and is entitled to payment of any retirement benefit under this plan, other than a refund of all or a portion of his contribution to the fund, he may elect prior to his termination of employment to receive service credit for that period of time spent in active military service in the Armed Forces of the United States, subject to a maximum of four years of total credit; provided, however, that the employee (1) was employed by metropolitan government immediately prior to entry into active military service and immediately returned to employment by metropolitan government upon discharge from such service, (2) was honorably discharged, and (3) that the employee does not receive retirement credit in any other Tennessee retirement system for his military service that results in a duplication of benefits.

As of January 1, 1998 any member that dies, who has taken FMLA leave within twelve months of the member's death, will receive a maximum of three months' credited service for the amount of time that the member was on approved family medical leave.

"Current employee service" means all continuous uninterrupted service after April 1, 1963, of an eligible employee who is a member, excluding his current police and fire service.

"Current police and fire service" means all continuous, uninterrupted service after April 1, 1963, of an eligible employee during which time he is a fireman, policeman or correctional officer and is a member; provided, however,

such service shall not include any service after a member's compulsory retirement age.

"Dependent child" means a child of an eligible employee, whether adopted, natural, stepchild or foster child, who has not attained the age of nineteen and who is unmarried and dependent upon the eligible employee for support and maintenance; provided, however, that if a dependent child has reached his nineteenth birthday, he still may qualify as a dependent child if he is under age twenty-three and is a full-time student at an accredited school or university. Provided, however, that for purposes of the medical plan, "dependent child" means and is defined in accordance with the document, as approved by the board, that describes the medical plan.

"Disabled member" means a member whose termination, as defined in this section, was because of disability in accordance with Sections 3.28.010 through 3.28.080 or Section 3.29.010 through 3.29.080 and is eligible to receive benefits in accordance with Sections 3.28.010 through 3.28.080 or Sections 3.29.010 through 3.29.080.

"Earnings" means, from and after January 1, 1987, the total cash compensation paid by the metropolitan government or by a predecessor government to a metropolitan employee for his personal services excluding all sums in excess of amounts he would have received in his regular position if he is on a leave of absence from his regular position. However, earnings shall not include cash compensation paid to a metropolitan employee for services provided on or after December 1, 1998, to an entity or person other than the metropolitan government or an agency thereof pursuant to a contract between the metropolitan government and the person or entity by which the person or entity reimburses the metropolitan government for the metropolitan employee's compensation. Prior to January 1, 1987, only base pay shall be used to calculate earnings except that longevity pay shall also be included for purposes of calculating pensions granted from and after January 1, 1986.

"Earnings while disabled" means all compensation, gain or profit of a disabled employee who works or engages in any business or occupation.

"Eligible employee" means a metropolitan employee during any and all times that (1) he is not covered by or eligible for any benefit provided by any former plan or state retirement for county paid judges pension plan, (2) he is not covered by any pension plan for teachers established in accordance with Section 9.07 of the Metropolitan Charter, or (3) he is not covered under any other pension plan provided by or whose obligations have been assumed by the metropolitan government as required or permitted by the Metropolitan Charter.

"Employee of a predecessor government" means any employee of a predecessor government who was regularly employed by and performed personal services for such predecessor government, including any elected and appointed official of a predecessor government, and who became a metropolitan employee on April 1, 1963.

"Fiscal year" means the fiscal year adopted from time to time by the metropolitan government.

"Former plan" means the pension, retirement and benefit plan for policemen and firemen of the former city of Nashville, created in accordance with the provisions of Article 48 of Chapter 246 of the Private Acts of 1947 and all acts amendatory thereof; the pension, retirement and benefit plan for the city judge and civil service employees of the former city of Nashville, created in accordance with the provisions of Article 48 of Chapter 246 of the Private Acts of 1947 and all acts amendatory thereof; the retirement plan for officers and employees of the former county of Davidson, created in accordance with the provisions of Chapter 274 of the Private Acts of 1943 and all acts amendatory thereof, and a retirement or benefit plan for county paid judges and county attorneys.

"Foster child" means a child living in the residence of an eligible employee in accordance with "foster care placement," which means and is defined as the supervised adoption period prior to final adoption, as approved by a court of competent jurisdiction.

"Frozen earnings" means the average of monthly earnings of an eligible employee who has become a disabled employee in accordance with Sections 3.28.010 through 3.28.080 or Sections 3.29.010 through 3.29.080 for the twelve consecutive calendar months which precede the month in which his termination of employment as a metropolitan employee occurred. Provided, however, that the calculation of frozen earnings shall take into account all of the non-merit salary increases that have accrued to the position since the employee's termination as a metropolitan employee. In the event that a disabled employee's former position has been abolished or relegated to a lower pay classification, the civil service commission shall designate a comparable pay classification for the purpose of computing the disabled employee's non-merit salary increases in calculating frozen earnings.

"Fund" or "trust fund" shall refer to three separate trust funds defined in Section 3.08.130 established to provide benefits under Chapters 3.28 through 3.40 of the system. Trust Fund A1 shall be earmarked to provide the benefits defined in subdivision 3 of the subsection defining "system" within this section, Trust Fund B to provide the benefits defined in subdivision 4 of that subsection, and Trust Fund C to provide the benefits defined in subdivision 5 of that subsection, and the provisions of Section 3.08.130

shall be interpreted to apply to each of these three funds separately.

“Interruption of service” means and shall be deemed to occur upon termination of a metropolitan employee; except, that an interruption of service shall not be deemed to occur in the event of an extended sick leave or leave of absence granted by any duly authorized metropolitan government official or any service, voluntary or involuntary, in the armed forces of the United States, provided the employee is entitled to reemployment under the provisions of any applicable state or federal law and that he does apply for reemployment with the metropolitan government and becomes a metropolitan employee within the time specified by law and in the manner and under the conditions prescribed by law; provided, that service shall not include any time that he is not a metropolitan employee.

“Member” means a metropolitan employee who has established credited service in the system and whose membership in the system has not ceased as provided in Section 3.12.050.

“Metropolitan employee” means any person, whether classified or unclassified, who is regularly employed on or after April 1, 1963, by the metropolitan government and is compensated in whole or in part by the metropolitan government for personal services performed for the metropolitan government, and shall include (1) any person who is an appointed official of the metropolitan government, (2) any person who is an official of the metropolitan government who is elected by popular vote, (3) any person who is regularly employed in the metropolitan government by an elected official of the metropolitan government, and (4) any person who is regularly employed in the service of the metropolitan government and who is appointed by an elected official of the metropolitan government. In all cases of doubt, the employee benefit board shall determine whether or not a person is a metropolitan employee, as defined herein.

“Metropolitan government” means the metropolitan government of Nashville and Davidson County, Tennessee, as authorized by referendum adopting the Metropolitan Charter on June 28, 1962, and as effective April 1, 1963, excluding the metropolitan transit authority and excluding the electric power board of the metropolitan government.

“Participant in a former plan” means any metropolitan employee who, on March 31, 1963, was covered under a former plan or then had a right to receive a benefit from a former plan.

“Physician” means a legally licensed Doctor of Medicine or osteopathy.

“Policeman” means an eligible employee who is a police officer in the department of police, as determined in

accordance with the qualifications of a police officer prescribed by applicable rules and regulations of the civil service commission. “Policeman” shall also include personnel employed by the department of parks and recreation designated as special police pursuant to Section 11.1005 of the Metropolitan Charter. An eligible employee in the department of police who is not a police officer shall not be deemed to be a policeman. A policeman shall not lose his standing by virtue of a voluntary transfer into a civilian position, once having established credited service as a policeman, provided written application to continue such designation is approved by the board. Such application filed with the board will only be approved by the board on a showing that the policeman has sustained a disability that prevents him from maintaining his position as a policeman, and stating that the policeman wants to move to a civilian position rather than take disability retirement.

“Predecessor government” means either the government of the city of Nashville or of the county of Davidson, or both, as the contract may require, as they existed prior to April 1, 1963.

“Prior employee service” means all service prior to April 1, 1963, of a member who was a metropolitan employee on April 1, 1963, whether such service is continuous or not, excluding all his prior fire and police service and excluding one-half of all service for which he was not covered under a former plan; provided, that any person who becomes a metropolitan employee after April 1, 1963, shall not be allowed credit for any service prior to his becoming an eligible employee.

Each metropolitan employee who was hired prior to January 1, 1972, and who first becomes a member as of that date shall receive full credit for service while he was covered under a former plan and shall be eligible to receive one-half credit for any service for which he was not covered by a former plan.

“Prior police and fire service” means all service prior to April 1, 1963, of a member who was a metropolitan employee on April 1, 1963, whether such service is continuous or not, as a uniformed fireman or a uniformed policeman employed by a predecessor government, or as a uniformed, full-time employee of the sheriff’s office of the former Davidson County; provided, that any person who becomes a metropolitan employee after April 1, 1963, shall not be allowed credit for any service prior to his becoming an eligible employee.

Each metropolitan employee who was a uniformed fireman or policeman and first became a member as of January 1, 1972, shall receive full credit for service while he was covered under a former plan and shall be eligible to

receive one-half credit for any service for which he was not covered by a former plan.

“Retired member” means a member who is no longer a metropolitan employee and who is eligible to receive a pension provided in Chapters 3.32, 3.33, 3.36, 3.37 or 3.40.

“Service of a member” means the time that an eligible employee is employed by the metropolitan government or by a predecessor government, in accordance with this section, excluding (1) all the time during which he was or is covered by a retirement plan for teachers maintained in whole or in part by funds provided by any predecessor government or the state, and excluding (2) one-half of all time during which he was not covered by a former plan, and excluding (3) service of a member who is an eligible employee but who is prohibited by the Metropolitan Charter from being eligible for any pension provided by this system. “Service” shall be determined in years and full months with one month to be counted for any month in which his normal work week was at least twenty hours per week and one-half a month shall be counted for any month in which his normal work week was at least ten but not as many as twenty hours per week. No more than one month of credit shall be counted for any one calendar month.

In those instances where the employee is regularly employed on a nine- or a ten-month basis, and the employing agency has established the work year as being less than twelve months due to the nature of their work, e.g., board of education employees, metro action commission employees, and school mother’s patrol, those employees shall be entitled to receive twelve months’ service credit for their work during each such full work year. If the employee works less than the full nine or ten month work year, the employee will only receive credit for the time actually worked.*

* It is the intent of the metropolitan county council that the previous paragraph shall have a retroactive application.

“System” means the metropolitan employee benefit system, comprising the following nine plans:

1. Plan for life insurance benefits as provided in Chapter 3.20, excluding 3.20.040, and such provisions of Chapters 3.08, 3.12 and 3.16 as apply to such benefits;

2. Plan for medical care benefits as provided in Chapter 3.24 and such provisions of Chapters 3.08, 3.12 and 3.16 as apply to such benefits;

3. Plan for disability benefits as provided in Sections 3.28.010 through 3.28.070 and such provisions of Chapters 3.08, 3.12 and 3.16 as apply to such benefits. This plan, intended to constitute a trust under Section 501(c)(9) of the Internal Revenue Code of 1954, as amended, is de-

fined under the provisions of Sections 3.08.010, 3.08.020 through 3.08.040, 3.08.060, 3.08.080, 3.08.100 through 3.08.160, 3.08.180, 3.08.190, 3.08.210 through 3.08.240, Chapter 3.12, Chapter 3.16 and Sections 3.28.010 through 3.28.070, as these provisions apply to disability benefits defined in Sections 3.28.010 through 3.28.070, liabilities of which are covered by Trust Fund A.

- a. The following provisions of the system do not apply to this plan:

- Section 3.12.010;
- Sections 3.16.010, 3.16.040;
- Chapters 3.20 and 3.24;
- Sections 3.28.080, Chapters 3.29, 3.32, 3.33, 3.36, 3.37 and 3.40.

4. Plan for pension benefits for credited employee service as provided in Section 3.28.080, Chapters 3.32 and 3.40. This plan, intended to be qualified under Section 401 of the Internal Revenue Code of 1954, as amended, is defined under the provisions of Chapters 3.08, 3.12 and 3.16, Section 3.28.080, and Chapters 3.32 and 3.40 as these provisions apply to benefits arising from credited employee service, the liabilities for which are covered by Trust Fund B.

- a. The following provisions of the system do not apply to this plan:

- Section 3.08.010, definitions of “disabled member,” “earnings while disabled,” “prior police and fire service,” “current police and fire service,” “credited police and fire service,” and “hospital”;
- Sections 3.16.020, 3.16.040;
- Chapters 3.20 and 3.24;
- Sections 3.28.010 through 3.28.070;
- Chapters 3.29, 3.33, 3.36 and 3.37.

5. Plan for pension benefits for credited fire and police service as provided in Section 3.28.080, Chapters 3.36 and 3.40. This plan, intended to be qualified under Section 401 of the Internal Revenue Code of 1954, as amended, is defined under the provisions of Chapters 3.08, 3.12 and 3.16, Section 3.28.080, Chapters 3.36 and 3.40 as these apply to benefits arising from credited fire and police service, the liabilities for which are covered by Trust Fund C.

- a. The following provisions of the system do not apply to this plan:

- Section 3.08.010, definitions of “disabled member,” “earnings while disabled,” “prior employee service,” “current employee service,” “credited employee service,” “dependent child,” “hospital,” and “physician”;

- Sections 3.16.020, 3.16.040;
- Chapters 3.20 and 3.24, Sections 3.28.010 through 3.28.070;
- Chapters 3.29, 3.32, 3.33 and 3.37.

6. Plan for hazardous duty death benefit, as defined in Section 3.20.040.

7. Plan for disability benefits for Division B as provided in Section 3.29.010 through 3.29.070 and such provisions of Chapters 3.08, 3.12 and 3.16 as apply to such benefits. This plan, as intended to constitute a trust under Section 5.01(c)9 of the Internal Revenue Code of 1954, as amended, is defined under the provisions of 3.08.010, 3.08.020 through 3.08.040, 3.08.060, 3.08.080, 3.08.100 through 3.08.160, 3.08.180, 3.08.190, 3.08.210 through 3.08.240, Chapter 3.12, Chapter 3.16 and Sections 3.29.010 through 3.29.070, as these provisions apply to disability benefits defined in Sections 3.29.010 through 3.29.070, liabilities of which are covered by Trust Fund A.

a. The following provisions of the system do not apply to this plan:

- Sections 3.12.010;
- Sections 3.16.010, 3.16.040;
- Chapters 3.20 and 3.24;
- Section 3.29.080, Chapters 3.28, 3.32, 3.33, 3.36, 3.37 and 3.40.

8. Plan for pension benefits for credited employee service as provided in Section 3.29.080, Chapters 3.33 and 3.40. This plan, intended to be qualified under Section 401 of the Internal Revenue Code of 1954, as amended, is defined under the provisions of Chapters 3.08, 3.12 and 3.16, Section 3.29.080, and Chapters 3.08, 3.12 and 3.16, Section 3.29.080, and Chapters 3.33 and 3.40 as these provisions apply to benefits arising from credited employee service, the liabilities for which are covered by Trust Fund B.

a. The following provisions of the system do not apply to this plan:

- Section 3.08.010, definitions of “disabled member,” “earnings while disabled,” “prior police and fire service,” “current police and fire service,” “credited police and fire service,” and “hospital”;
- Sections 3.16.020, 3.16.040;
- Chapters 3.20 and 3.24;
- Sections 3.29.010 through 3.29.070;
- Chapters 3.28, 3.32, 3.36 and 3.37.

9. Plan for pension benefits for credited fire and police service as provided in Section 3.29.080, Chapters 3.37

and 3.40. This plan, intended to be qualified under Section 401 of the Internal Revenue Code of 1954, as amended, is defined under the provisions of Chapters 3.08, 3.12 and 3.16, Section 3.29.080, Chapters 3.37 and 3.40 as these apply to benefits arising from credited fire and police service, the liabilities for which are covered by Trust Fund C.

a. The following provisions of the system do not apply to this plan:

- Section 3.08.010, definitions of “disabled member,” “earnings while disabled,” “prior employee service,” “current employee service,” “credited employee service,” “dependent child,” “hospital,” and “physician”;
- Sections 3.16.020, 3.16.040;
- Chapters 3.20 and 3.24; Sections 3.29.010 through 3.29.070;
- Chapters 3.28, 3.32, 3.33 and 3.36.

“Termination” means the termination of employment of a metropolitan employee. (Ord. BL2003-1347 §§ 1, 2, 3, 2003; Amdt. 1 with Ord. 2001-775 § 5, 2001; Ord. 98-1426 § 1, 1998; Ord. 98-1369 § 1, 1998; Ord. 97-1018 §§ 4, 5, 1997; Ord. 96-540 § 1, 1996; Ord. 95-1452 §§ 1—14 and 16, 1995; Ord. 93-794 § 1, 1993; Ord. 92-159 §§ 1—4, 1992; Ord. 88-514 § 1, 1988; prior code § 32-1-1)

3.08.011 Division A definitions.

Definitions Applicable to Division A Only. For the purposes of Chapters 3.28, 3.32 and 3.36, the following words and phrases shall have the meanings given them by this section. These definitions will be in addition to the general definitions set out in Section 3.08.010 when construing Division A:

Ambulance Division Employees. Wherever in this plan for employee benefits the term “fireman” is used, such term shall also include all uniformed employees of the ambulance division of the metropolitan department.

“Average base earnings” means the average of base earnings determined for the same calendar years that average earnings are determined.

“Base earnings” means that part of earnings in any calendar year determined in accordance with the following table:

Employee’s Year of Birth	Base Earnings
1903 or earlier	\$4,800.00
1904—1906	5,400.00
1907—1913	6,000.00
1914—1928	6,600.00
1929—1935	7,200.00

Employee's Year of Birth Base Earnings

1936 or later 7,800.00

"Excess earnings" means that part of earnings in any calendar year which is in excess of the base earnings.

"Fireman" means an eligible employee who is in the uniformed fire services of any division of the department of fire of the metropolitan government in accordance with qualifications and requirements of the uniformed fire services of any division of such department of fire prescribed by applicable rules and regulations of the civil service commission. An eligible employee in the department of fire who is not in the uniformed fire services of any division of the department of fire shall not be deemed to be a fireman. (Ord. 96-540 § 2, 1996; Ord. 95-1452 § 17, 1995)

3.08.012 Division B definitions.

Definitions Applicable to Division B Only. For the purposes of Chapters 3.29, 3.33 and 3.37, the following words and phrases shall have meanings given them by this section. These definitions will be in addition to the general definitions set out in Section 3.08.010 when construing Division B:

"Fire fighter" means an eligible employee in the "uniformed fire services" of any division of the department of fire, including those persons in the ambulance division who are certified EMT's or paramedics. "Uniformed fire services" include those positions within the fire department dealing with fire suppression, fire prevention, fire training and fire inspection. Any questions as to whether an eligible employee will belong to the police and fire plan (Chapter 3.37) or the plan for credited employee service (Chapter 3.33) will be determined by the board. "Civilian positions" within the department shall not be deemed to be fire fighters. A fire fighter shall not lose his standing by virtue of a voluntary transfer into a civilian position, once having established credited service as a fire fighter, provided written application to continue such designation is approved by the board. Such applications filed with the board will only be approved by the board on a showing that the fire fighter has sustained a disability that prevents him from maintaining his position as a fire fighter, and stating that the fire fighter wants to move to a civilian position rather than take disability retirement.

Unreduced Retirement Age.

1. "Unreduced retirement age" means a member's age on his unreduced retirement date.

2. "Unreduced retirement age" for a member whose service has terminated means the age at which he would have attained his unreduced retirement age if his service had continued.

Unreduced Retirement Date.

1. "Unreduced retirement date," with respect to members with credited employee service, means the earlier of:

a. The date when his age last birthday plus his completed years of credited employee service equals eighty-five, but not before age sixty; and

b. The date when he reaches age sixty-five and completes five years of credited employee service.

2. "Unreduced retirement date," with respect to members with credited police and fire service, means the date when his age last birthday plus his completed years of credited police and fire service equals seventy-five, but not before age fifty-three nor after age sixty. (Ord. 95-1452 § 18, 1995)

3.08.020 System established—Application of former plan.

A. There is created and established, as of September 1, 1964, a system of employee benefit plans for officers and employees of the metropolitan government of Nashville and Davidson County to be known as the "metropolitan employee benefit system." The system is created pursuant to Article 13 of the Metropolitan Charter. All transactions of the system shall be in the name of the system.

B. Payment of benefits under any former plans shall be outside the scope of this system, and no interpretation or administrative act or ruling in connection with this system shall affect, relate to or otherwise be construed in any way to apply to any former plan or any benefit from such former plan to which any metropolitan employee may be entitled.

C. No metropolitan employee shall be eligible to receive any benefit from this system if he is eligible to receive any benefit from or is covered in any way by a former plan, notwithstanding any provision in this system to the contrary. (Prior code § 32-1-2)

3.08.030 Intent and purpose of system.

A. The metropolitan employee benefit system provides a program of benefits for members to provide for specific kinds of needs upon death, upon hospitalization and sickness and upon retirement because of disability or old age. The stated intent of the system is to provide a well-balanced program of such benefits and to have a system founded on concepts of sound actuarial principles in order that the system can, to as great an extent as possible, be considered sound as to benefits and costs in the future. It shall also be the stated intention, before amendments or changes are to be made to the system, that the financial effect of proposed changes on the actuarial soundness of the system be determined on the basis of competent actuarial, legal and other necessary advice as the board shall

assemble and that such information be available to all interested parties.

B. It is the stated purpose that the system's (1) death benefits in the future provide benefits payable upon the death of the employee which are not inconsistent with group life insurance plans in general use by businesses and industries in Davidson County and (2) medical care benefits in the future provide a member a means of cushioning in a reasonable way the economic impact of medical care costs without his profiting because of any duplication of benefits and that the future level of medical care benefits be consistent with the general relationship of medical care benefits to prevailing cost in Davidson County of medical care at the inception of the system. The stated purpose of the retirement benefits, both for disability and old age, is to replace income and provide reasonable pensions to those members who have lost substantially their capacity to earn by reason of disability or old age. It is not the intention that the system provide a pension income to a metropolitan employee who contends disability, but who has not lost his power to work for compensable earnings or profits, except to the extent specifically provided in Sections 3.28.010 through 3.28.070 and 3.29.010 through 3.29.070. It is not the intention that the disability benefits of the system represent in any way an indemnity for a loss, whether or not such loss is suffered in the course of employment, except as provided in Sections 3.28.010 through 3.28.070 and 3.29.010 through 3.29.070. (Ord. 95-1452 § 19, 1995; prior code § 32-1-3)

3.08.040 Benefit board—Administration authority—Powers and duties.

A. The metropolitan employee benefit board shall administer, manage and coordinate the metropolitan employee benefit system in accordance with the provisions of the system, subject to and not inconsistent with Article 13 of the Metropolitan Charter. The board shall, as soon as practicable after adoption of the system by the metropolitan council, act as follows:

1. Meet with the legal counsel and actuarial consultants, as provided in Section 13.05(b) of the Metropolitan Charter, to coordinate and establish administrative details, forms and procedures to be followed in enrolling persons who are eligible to become members in the system in accordance with Chapter 3.12;

2. Select, in accordance with Section 3.08.110, an insurer or insurers to underwrite and administer the life insurance benefits and medical care benefits provided in Chapters 3.20 and 3.24, respectively, and execute any contract required;

3. Direct the preparation of and approve a booklet explaining the metropolitan employee benefit system in

full detail, and make available in the pension office to metropolitan employees full information concerning a metropolitan employee's status and his rights concerning the system;

4. Act promptly to secure social security coverage for all eligible employees, in accordance with Section 3.08.150;

5. Adopt, from time to time, as it sees fit, actuarial and other tables necessary for the administration of the system.

B. The board shall be empowered to employ the services of investment consultants, and the services of others which, in the sole discretion of the board, may be necessary to maintain a soundly designed, administered and financed system.

C. The board shall be entitled to rely upon all tables, valuations, certificates and reports as furnished by any consultant or actuary, all opinions given by legal counsel of the board, and any advice of a qualified investment consultant. The board shall be fully protected with respect to any action taken or suffered by the board in good faith and reliance upon the advice or opinion of any such consultant, actuary, legal counsel or investment consultant, and all actions so taken or suffered shall be conclusive upon each of them and upon all members and other persons interested in the system.

D. The expenses incurred in the installation, administration and revision of the system, expenses of investment consultants, investment analysis, actuarial consultants, expenses incurred by the treasurer in the performance of his duties and all other proper charges and disbursements for the administration, design and financing of the system shall be paid from the trust fund, subject to the approval of the board, unless otherwise paid by metropolitan government.

- E. 1. The board shall have jurisdiction over all voluntary benefit plans for employees of the metropolitan government who are subject to the jurisdiction of the board. "Voluntary benefit programs" means and is defined as any program to be offered to the employees of the metropolitan government, either through direct payment or payroll deduction, which provides a service, product or benefit that is made available to the employee by the employee paying one hundred percent of the cost of the service, product or benefit. Such services, products or benefits may include, but shall not be limited to, life, medical, dental, vision, disability and other forms of insurance, prepaid legal services, prepaid burial services, deferred compensation plans and other similar benefits.

2. Voluntary benefit programs shall be available to current employees and those persons receiving benefits under any pension system administered by the board.

3. All voluntary benefit programs shall be subject to the rules and regulations adopted by the board for the administration of such programs. The rules and regulations adopted by the board shall be filed with the metropolitan clerk as a public record. No voluntary benefit program shall be offered to metropolitan employees without the prior approval of the board. All current voluntary benefit programs shall be reviewed by the board, after the passage of the ordinance codified in this subsection, and shall be subject to recertification by the board.

4. Contributions by employees for any voluntary benefit programs approved by the board may be made by payroll deduction, if approved by the board, or be made by a direct payment to the provider. Contributions of individual employees shall not be collected on the premises of the metropolitan government. Any contributions collected by payroll deduction shall be remitted to the provider of the voluntary benefit program, as directed by the board, but remittances to any specific provider shall not be more frequent than twice a month unless agreed to by the supervisor of payroll, in writing.

5. No part of the cost of administration shall be borne by the board or by the metropolitan government, except the cost of administering payroll deductions. The board, with the assistance of the data processing division, or such other metropolitan departments as the board deems appropriate, shall establish startup costs or other administrative charges that may be incurred in adding any voluntary benefit program provider to the system. No provider may be added to the system until such startup costs or other administrative charges are paid in advance. Any additional charges incurred by the board or the metropolitan government shall be billed to the provider and paid within sixty days. Failure of the provider to pay the additional charges within sixty days shall be cause for the provider to be suspended from payroll deduction privileges until the additional charges are paid.

6. The board's rules and regulations shall provide for an annual accounting of contributions collected from employees or pensioners. The annual accounting shall include both payroll deduction and direct payment collections. Any provider failing to render such accounting shall have its payroll deduction privileges suspended until the accounting is made to the board. The annual accounting period shall be established by the board and shall be uniform in its application to all voluntary benefit program providers.

7. The board shall review each approved program on an annual basis and shall approve or disapprove the continued participation of each provider as of October of each year.

8. No voluntary benefit program shall be established by the board unless it provides that all metropolitan employees or pensioners who are eligible may participate therein.

9. In the event that the board determines that any such voluntary benefit program fails to meet any of the conditions set out herein, or fails to meet any conditions set out in the board's rules and regulations as approved by the board from time to time, the board shall withdraw its approval of such program, and thereafter contributions from metropolitan employees or pensioners shall no longer be collected by payroll deduction and such provider shall no longer be authorized to solicit participation of metropolitan employees or pensioners.

10. Voluntary benefit programs as defined in this subsection shall specifically exclude charitable organizations seeking approval for payroll deduction privileges. Jurisdiction over such charitable organizations, for payroll deduction purposes, shall be vested in the director of finance.

F. 1. Jurisdiction over flexible benefit plans under Section 125 of the Internal Revenue Code is placed under the board. The board shall have authority to develop such plans as are consistent with the Internal Revenue Code as it exists from time to time. The board shall have the authority to execute all necessary documents to qualify and administer such plans.

2. Upon the establishment of any flexible benefit plans by the board, the department of finance shall establish a separate account to be known as the "flexible benefit plan reserve savings account." To this account shall be transferred all funds that would otherwise have been paid as employer FICA contributions on that portion of the employees' earnings now subject to the flexible benefit deduction provided under Section 125 of the Internal Revenue Code for those employees participating in the flexible benefit plan. Transfers to the flexible benefit plan reserve savings account shall be on at least a quarterly basis.

3. The funds in the flexible benefit plan savings account shall be used for the following purposes:

a. To offset the expenses incurred in the installation, administration and maintenance of the flexible benefit plan or plans and all other charges and disbursements for the administration and design of the flexible benefit plans;

b. The balance of the flexible benefit plan reserve savings account, at the end of each fiscal year, shall be transferred to the self-insured portion of the employee medical benefit trust fund account.

G. 1. The board shall establish a "medical case management" program (hereinafter referred to as case management) to encourage and assist in the rehabilitation and retraining of disabled members, whether on disability pensions due to in-line-of-duty injuries or because of non-

job-related medical problems. The case management program may be operated by the board or by an organization not related to Metro but experienced in the operation of similar programs. The case manager shall be selected by the board.

2. The board shall have the authority to require participation in the rehabilitation program by a member or disabled member who, in the opinion of the board, and as documented by competent medical evidence either from (1) the member or disabled member's own medical physician or (2) through an independent medical examination authorized and paid for by the board, is physically and mentally able to participate in the program. The board shall have the authority to pay for such services. The board may terminate the disability pension of a disabled member who refuses to participate in the program, or who fails to complete the program and who has not provided proper medical justification to the board for failing to participate in or complete the rehabilitation or retraining program.

3. The program may, to the extent feasible, include the identification and case management of members who are not disabled but who, due to their utilization of in-line-of-duty "injury leave" benefits appear likely to qualify for disability benefits in the near future in the absence of early intervention of the case management concept. The board shall be responsible for developing the criteria to determine the identification of such persons and shall approve all such intervention or shall establish policies and procedures authorizing the board office to direct such intervention. Case management shall also be available to those members utilizing sick leave and likely to qualify for disability benefits but such use shall be on a voluntary basis.

4. All injuries to members participating in the system of benefits administered by the metropolitan employee benefit board shall be reported to the board under policies and procedures adopted by the board. The board shall set out its own form for reporting such injuries or may adopt the form used by the insurance and safety division for reporting injuries.

5. The board shall identify specific catastrophic type injuries that must be reported immediately to the board, by the department, upon notification to the department that such an injury has occurred.

6. The board shall have authority to enter into a contract with a "case manager" to work with the board in overseeing medical treatment plans, rehabilitation programs, and retraining programs for such injuries so that the member or disabled member shall receive continuity of treatment, rehabilitative services, retraining programs, and such other services as may be needed to decrease the likelihood that such individual will ultimately end up on or continue on a disability pension.

7. It is specifically the intent of this subsection that such services may be provided from funds provided directly by the general fund or the metropolitan government, or that the board in its discretion is authorized to use funds allocated to it under the employer contribution rate for pension purposes for disability benefits.

8. The board shall have authority to use the services of General Hospital, or such other service providers that it shall contract with to provide such services. It is hereby specifically authorized that the board shall have the authority to seek out services of other service providers and enter into contracts with them, provided that such services can be rendered at competitive prices.

H. The board is authorized to administer to police and fire employees wellness testing and education programs, to be conducted on-site, addressing weight control, blood pressure, smoking cessation, exercise programs and other health-related subjects, including health risk appraisal programs. The board shall be authorized to implement programs to provide early intervention into areas that are causing, or having the potential of causing, disability pensions, either medical or in-line-of-duty. The wellness and preventative care program shall be conducted in accordance with uniform policies and procedures adopted by the board.

I. The metropolitan employee benefit board shall administer, manage and coordinate the employee safety functions previously performed by the insurance and safety division of the department of law, including the following functions:

1. Direct, coordinate and administer the employee safety program of the metropolitan government;

2. Promulgate applicable rules, regulations and procedures relating to the safe premises, equipment and environment of metropolitan government employees;

3. Maintain and preserve all necessary records regarding employee safety required under law by the state or by the federal government;

4. Investigate in-line-of-duty injury claims in accordance with procedures established by the metropolitan employee benefit board and applicable rules adopted by the civil service board;

5. Make safety reports and recommendations to the metropolitan county mayor, such reports and recommendations being addressed to the metropolitan county mayor and forwarded to the metropolitan county mayor by the executive secretary of the metropolitan employee benefit board. (Ord. 95-1452 §§ 20, 46, 1995; Ord. 95-1446 § 4, 1995; Amdt. 1 to Ord. 90-1165, 4/3/90; Ord. 90-1165 §§ 1—3, 1990; prior code § 32-1-4)

3.08.050 Benefit board—Executive secretary.

The board shall appoint an executive secretary and may enter into an employment contract with such person for a period not exceeding four years, and at a compensation to be fixed by the board, subject to the pay plan structure established by the metropolitan civil service commission, which contract must be approved by resolution adopted by the metropolitan county council by twenty-one affirmative votes. The executive secretary shall be a person who has had at least four years' experience in the administration of employee benefits. (Amdt. 2 to Ord. 95-1452, 6/20/95; Ord. 95-1452 § 21, 1995; Amdt. 2 to Ord. 92-159, 2/4/92; § 7 of Amdt. 1 to Ord. 92-159, 2/4/92; Ord. 92-159 § 7, 1992; prior code § 32-1-4.1)

3.08.060 Board members—Prohibited personal interests.

A. No person on the board shall participate, directly or indirectly, in the gains or profits of any investment of the trust fund, except to the extent any person on the board may be a member or beneficiary of the system.

B. No person on the board shall participate, directly or indirectly, in commissions or compensation in any form from any insurance company or hospital service association which underwrites any of the benefits provided by the system, except to the extent any member of the board may be a member or a beneficiary of the system.

C. No person on the board shall, directly or indirectly, for himself or as an agent, use in any manner the funds or deposits of the system, except to make such payments therefrom as are authorized by the board, nor shall any person on the board become an endorser or surety of any type or an obligor for money loaned by or borrowed from the system. (Prior code § 32-1-9)

3.08.080 Prior service certificates.

A. As soon as practicable after September 1, 1964, the board shall determine the prior police and fire service and the prior employee service of each member who was a metropolitan employee on April 1, 1963, and shall issue to each such member a certificate showing such amounts of his prior service. If the board discovers that any amount of prior service recorded on a certificate is incorrect, a corrected certificate shall be issued promptly which shall revoke and supersede all certificates previously issued. Copies of such certificates shall become a part of the permanent records maintained by the board for the purpose of determining benefits to members or their beneficiaries. In establishing such records, the board may require, in its discretion, members, beneficiaries and other persons to submit affidavits as to any information which affects benefits payable to members or their beneficiaries. Upon the

termination of a member, his certificate of prior service shall be void as of his date of termination.

B. Any member who first becomes a member as of January 1, 1972, pursuant to provisions of Section 3.12.030, shall similarly be furnished a certificate of prior service. (Prior code § 32-1-11)

3.08.100 Beneficiary payments—Minors and legally incompetent persons.

If any member or beneficiary is a minor or is, in the judgment of the board, otherwise legally incapable of personally receiving and giving a valid receipt for any payment due him hereunder, the board may, unless and until claim shall have been made by a guardian or conservator of such person duly appointed by a court of competent jurisdiction, direct that such payment or any part thereof be made to such person's spouse, child, parent, brother or sister, deemed by the board to have incurred expense for or assumed responsibility for the expenses of such person. Any payments so made shall be a complete discharge of any liability under the system for such payment. (Prior code § 32-1-17)

3.08.110 Insurer selection—Procedure—Plan approval by council required.

A. The board, together with actuarial and other consultants and legal counsel, shall prepare specifications for submission to insurers (insurance companies and hospital service associations) or organizations interested in insuring, providing or administering some or all of the benefits or services provided in Chapters 3.20 and 3.24 of the system. The board may provide the benefits described in Chapters 3.20 and 3.24 of the system through the medium of any sound financing vehicle widely used by employers of large numbers of employees, including conventional group insurance contracts or, in the case of medical care benefits provided in Chapter 3.24, through minimum premium group insurance contracts, self-insurance with administration by an insurance company as provided by Section 56-408 of the Insurance Law or through a health maintenance organization.

B. The board shall select an insurer to provide group life coverage for benefits provided in Chapter 3.20 and an insurer, administrator or health maintenance organization to provide medical care benefits or services provided in Chapter 3.24 and the board's decision shall be final. The board shall make its selection on the basis of low retention or administrative costs, the level of reserves required and the interest allowed thereon, the services to be provided and the general reputation and competence of the bidding organization.

C. Upon the selection of an insurer, administrator or health maintenance organization, the board shall be authorized and empowered to execute group or other contracts with such insurer or organization to provide coverage for benefits or services, as the case may be.

D. The board shall annually review the performance of each insurer that underwrites or administers a plan to furnish benefits or organization that provides services provided by the system and if the board determines that it is in the best interest of metropolitan government to resubmit specifications and select a new insurer, administrator or organization, it may do so in a manner consistent with this section.

E. The self-insured medical benefits plan shall be administered on a preferred provider (PPO)—nonpreferred provider (non-PPO) basis, with the term preferred provider meaning a preferred provider organization (PPO) which may include hospitals, physicians, and other health care providers which have entered into an agreement with the board or one of its agents, to provide services under the plan pursuant to a negotiated pricing arrangement. The aggregate maximum lifetime benefit shall be unlimited in regard to services performed by preferred providers (PPO) within the network and one million dollars for services provided by non-preferred providers (non-PPO) in the network. PPO benefits shall be paid at eighty percent of reasonable and customary charges and non-PPO benefits at sixty percent of reasonable and customary charges.

The annual out-of-pocket maximum for individual PPO coverage shall be one thousand dollars and for family coverage two thousand dollars. The individual out-of-pocket non-PPO maximum shall be five thousand dollars and family shall be ten thousand dollars.

All other terms and conditions of the self-insured plan shall be as approved by the board. (Ord. 97-857 §§ 1—3, 1997; Ord. 95-452 §§ 22, 23, 1995; prior code § 32-1-5)

3.08.120 Investment committee—Powers and duties.

The investment committee shall be constituted as provided in Section 13.04 of the Metropolitan Charter, and shall regulate and determine all matters dealing with investment of the trust fund, and shall have full and complete control over all investments, subject to the Metropolitan Charter and this system. Not in limitation, but in amplification of the powers and duties of the investment committee, the investment committee shall be authorized and empowered:

A. To invest and reinvest the principal and income of the trust fund in its discretion, subject to the terms of the Metropolitan Charter, Section 3.08.130 and this section, in all stocks, bonds, notes, debentures, mortgages, equipment

trust certificates, investment trust certificates, insurance company group annuity contracts and in such other property, real or personal, investments and securities of any kind, class or character, whether income producing or not, as the investment committee may deem suitable for the trust fund, including units of any common trust fund of any bank or trust organized under the laws of the state or the United States and qualified as state depositories. In making such investments and reinvestments, the investment committee shall be restricted to properties and securities authorized for investment by trustees or other fiduciaries under any present or future law;

B. To keep in its discretion such portion of the trust fund in cash or cash balances as the investment committee may, from time to time, deem to be in the best interest of the trust;

C. To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by private contract or at public auction, and no person dealing with the investment committee shall be bound to see to the application of the purchase money or to inquire into the validity, expediency or propriety of any such sale or other disposition;

D. To vote or to refrain from voting upon any stocks, bonds or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights or other options and to make any payments incidental thereto; to consent to or otherwise participate in corporate reorganizations or other changes affecting corporate securities and to delegate discretionary powers and to pay any assessments or charges in connection therewith, and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities or other property held in the fund;

E. To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

F. To employ suitable agents and counsel, and to pay their reasonable expenses and compensation;

G. To borrow money from time to time for the purposes of the trust on such terms and conditions as the board, in its sole discretion, may deem advisable, and for any sum so borrowed to issue its promissory note and to secure the repayment thereof by pledging all or any part of the funds;

H. To, by means of written instructions, at any time, direct managers, custodians or the metropolitan treasurer to make or not to make any investment or to dispose or not dispose of any investment, which the investment committee would be authorized to make or dispose of as provided herein. The manager, custodian or metropolitan treasurer

shall promptly comply with any such instructions and shall be fully protected in acting upon such instructions of the investment committee, and shall not be liable for any depreciation or loss resulting to the trust fund from any action to be taken or not taken pursuant to any such instructions of the investment committee or because of the failure of the investment committee to give instructions. (Ord. 95-1452 § 24, 1995; prior code § 32-1-7)

3.08.130 Trust funds—Established—Requirements.

A. For benefits provided by this system other than those in Chapters 3.20 and 3.24, all contributions by metro and by eligible employees shall be deposited in three separate trust funds:

1. “Metropolitan Government Trust Fund A” (hereinafter called Fund A) is the fund which provides the benefits defined in Sections 3.28.010 through 3.28.070, inclusive, and 3.29.010 through 3.29.070, inclusive, to which the appropriate amount of employer contribution defined in Section 3.16.050 shall be paid for Division A and Division B.

2. “Metropolitan Government Trust Fund B” (hereinafter called Fund B) is the fund which provides pensions and death benefits for credited service other than credited fire and police service for Division A and Division B.

3. “Metropolitan Government Trust Fund C” (hereinafter called Fund C) is the fund which provides pensions and death benefits for credited fire and police service for Division A and Division B.

Such trust funds shall be exclusively for the benefit of members and beneficiaries and shall be separate and apart from all other assets and funds of metropolitan government.

B. Registered securities of the funds may be registered in nominee or street names of the institutions managing the funds. Every change in registration by reason of sale or assignment of securities or any other method of transfer of securities shall be accomplished by an authorized signature of the committee; and such securities shall be delivered by the manager, custodian or metropolitan treasurer when directed, in writing, by the committee. The committee shall certify to the manager, custodian or metropolitan treasurer the authorized signatures of the committee and signatures of other persons who may sign directions of the committee to the manager or custodian. The manager, custodian or metropolitan treasurer shall be entitled to rely on the last received such certification of signatures until written notice to the contrary from the committee has been received. All disbursements from the funds shall be made subject to written direction by the committee through a document bearing the signature of a person authorized by

the committee to give such directions. The committee shall not be liable for the making, retention, or sale of any investment or reinvestment made by it, nor for any loss to or diminution of the funds, except due to its own gross negligence, wilful misconduct, or lack of good faith. (Ord. 96-540 § 3, 1996; Ord. 95-1452 §§ 25, 26, 27, 1995; prior code § 32-1-6)

3.08.140 Trust fund accounts—Established—Prior contributions.

A. Fund A shall have a retirement allowance account and Funds B and C shall have a member contribution account and a retirement allowance account. The member contribution account shall be the account to which each member’s contributions for pensions provided in Section 3.16.030 shall be credited. From this account shall be paid any refund of a member’s contribution for pensions due upon his termination. At the time of a member’s termination, his account balance shall be transferred to the appropriate retirement allowance account if a refund of his pension contributions is not then payable. Pension contributions by a member who is an eligible employee shall be payable each payroll period subsequent to his becoming a member and shall be deposited in the appropriate trust fund and credited to his individual account which shall be a subsidiary account of the member’s contribution account. Benefits shall be paid out of the appropriate trust fund.

B. Each member who has transferred from a former plan as of January 1, 1972, pursuant to Section 3.12.030, as amended, shall have a record set up in his name by the board to which shall be posted the amount of his prior contributions to a former plan. Each member as of any January 1st, commencing January 1, 1972, who then has three or more years of credited service shall have credited to his individual account interest applied to the amount of his individual account balance as of the preceding January 1st. The rate of interest shall be three percent per year or such higher rate as the board shall have declared.

C. A separate insurance account shall be maintained by the metropolitan government into which shall be paid monthly employee contributions for medical care benefits, together with contributions by the metropolitan government in accordance with Sections 3.16.010 and 3.16.040. In the case of insured benefits the monthly premiums required shall be paid promptly to the insurer. In the case of self-insured benefits there shall be paid each month to a special bank account an amount estimated by the administrator to be needed to meet benefit payments in the ensuing month. (Prior code § 32-1-8)

3.08.150 Social security benefits.

A. All eligible employees who are members shall be covered by social security. Each eligible employee who has made an election to transfer to the metropolitan employee benefit system, pursuant to Section 3.12.030, effective as of January 1, 1972, shall be covered for social security benefits commencing on that date or on the earliest date thereafter that such coverage is possible; provided, that he is eligible for social security coverage pursuant to all applicable state and federal laws and requirements.

B. The mayor of metropolitan government or the board, as the case may be, shall be authorized and empowered to execute any agreement or modification of an existing agreement and to take all other actions as may be necessary to accomplish such social security coverage upon recommendation of the board. All such action shall be accomplished as expeditiously as possible. Such agreement or modification of an agreement shall provide that no social security taxes of any sort shall be payable in respect of any service of a member prior to the date social security coverage becomes effective. If for any reason an employee is not eligible for social security coverage pursuant to state or federal law, he shall not be eligible to transfer into the metropolitan system and his election shall be null and void. (Prior code § 32-1-10)

3.08.160 Plan benefit payments—Conditions for approval.

Before any benefit payable from the trust fund can be paid, all conditions applicable to the payment of the benefit shall be met, written application for the benefit shall be presented to the board in such form and manner as the board shall determine and the payment of the benefit shall be approved and authorized by the board; provided, that if a member is not entitled to any benefit upon his termination as a metropolitan employee, other than a refund of his pension contributions, no application is necessary, and the payment of such refund shall be automatic. If any pension benefit provided in Chapters 3.32 or 3.36 is less than twenty dollars per month, the board, in its discretion, may pay the actuarially equivalent value of such benefit in one lump sum, or in such other manner as the board may determine. (Prior code § 32-1-12)

3.08.170 Plan benefit payments—Cost-of-living increase—Division A.

The provisions of this section shall apply only to those members who are covered under Division A of the system.

A. Each person receiving a benefit, pursuant to Chapters 3.32 and 3.36, or under an option in lieu of such benefit, shall be entitled to receive an escalation of such benefit in accordance with this section. An escalation, added to

any previous total escalations of benefit, shall become effective on January 1st of each year commencing with January 1, 1985; provided, that:

1. The benefit has commenced to be paid prior to January 1st for which an escalation is to be effective, or in the case of a disability pension that converts to a service pension due to the occurrence of a disability pensioner's sixty-fifth birthday in the month of December, commences to be paid on January 1st;

2. The amount of escalation shall be limited to an amount equal to the percentage of increase in the Consumer Price Index to the nearest one-half percent for the twelve months ending on the September 30th in the calendar year which precedes the calendar year for which the escalation shall apply; and

3. The total amount of escalation to be applied for a calendar year shall not exceed five percent.

B. The amount of escalation, if any, shall be computed on the basis of the initial amount only of the monthly benefit paid under the system and is not compounded from year to year; but if the amount of monthly benefit paid, exclusive of any escalation, changes either upward or downward, such as may be provided under an option, the amount of total escalation shall change correspondingly, so that the ratio of total monthly escalation before such change to total monthly escalation after such change is the same as the ratio of the monthly benefits before such change to the monthly benefits after such change, but otherwise, any benefit, once escalated, shall never decrease.

C. The amendments to subsection (A)(1) of this section made by Ordinance 97-1018 shall have a retroactive application date of December 1, 1996. (Amdt. 1 with Ord. 97-1018 §§ 1, 3 (part), 1997; Ord. 95-1452 §§ 28, 29, 1995; prior code 32-1-20.1)

3.08.171 Plan benefit payments—Cost-of-living increase—Division B.

The provisions of this section shall apply only to those members who are covered under Division B of the system.

A. Each person receiving a benefit, pursuant to Chapters 3.33 and 3.37, or under an option in lieu of such benefit, shall be entitled to receive an escalation of such benefit in accordance with this section. An escalation, added to any previous total escalations of benefit, shall become effective on January 1st of each year commencing with January 1, 1997; provided, that:

1. The benefit has commenced to be paid prior to January 1st for which an escalation is to be effective, or in the case of a disability pension that converts to a service pension due to the attainment of the disability pensioner's

unreduced retirement age in the month of December, commences to be paid on January 1st;

2. The amount of escalation shall be based upon the Consumer Price Index for the twelve months ending on the September 30th in the calendar year which precedes the calendar year for which the escalation shall apply; and

3. In determining the cost of living increase, the first percent of increase in the Consumer Price Index since the last escalation was granted shall not be taken into consideration. The amount of escalation shall be eighty percent of the next five percent of increase in the Consumer Price Index since the last escalation was granted. The amount of escalation shall be to the nearest one-half percent of increase, subject to a maximum escalation in any one calendar year of four percent.

B. The amount of escalation, if any, shall be computed on the basis of the initial amount only of the monthly benefit paid under the system and is not compounded from year to year; but if the amount of monthly benefit paid, exclusive of any escalation, changes either upward or downward, such as may be provided under an option, the amount of total escalation shall change correspondingly, so that the ratio of total monthly escalation before such change to total monthly escalation after such change is the same as the ratio of the monthly benefits before such change to the monthly benefits after such change, but otherwise, any benefit, once escalated, shall never decrease.

C. The amendments to subsection (A)(1) of this section made by Ordinance 97-1018 shall have a retroactive application date of December 1, 1996. (Amdt. 1 with Ord. 97-1018 §§ 2, 3 (part), 1997; Ord. 95-1452 § 30, 1995)

3.08.180 Plan benefits exempt from taxation, execution or assignment.

All benefits accrued or accruing to any member under this system, the contributions by members as well as by the metropolitan government and all other assets of the trust fund are and shall be exempt from any state, county or municipal tax and shall not be subject to execution, attachment, garnishment or any other legal process whatsoever, nor shall any assignment thereof be enforceable in any court; except, that levy of execution granted by a court of competent jurisdiction may issue against any of the assets described above in the event that a member does not repay social security taxes advanced for him by the metropolitan government in accordance with the provisions of Section 3.08.150. (Prior code 32-1-15)

3.08.190 Limitations of system provisions— Conflict with other systems.

Nothing contained in the system shall be deemed to give any member or metropolitan employee the right to be retained in the employment of the metropolitan government or to interfere with any established process by which the metropolitan government may at any time hire, supervise or discharge any metropolitan employee, regardless of the effect on him as a member. Nothing in the system shall be in conflict with the metropolitan government's system of personnel administration; and the powers and duties of the civil service commission shall not be affected in any way by this system. (Prior § 32-1-13)

3.08.200 Amendments to system provisions— Effect on benefits.

Any amendment or termination of any provision of this system shall be made only following an actuarial determination of its effect on the soundness of the system's design of benefits as well as its effect on the cost of the system, and disclosure of such information to all interested persons. No amendment or repeal of a provision of this system shall affect in any way the benefits then accrued or being paid to members, retired members, disabled members or beneficiaries or benefits based on service completed prior to the date of such amendment or repeal, except as provided in Section 3.08.220; provided, that in determining such accrued benefits of members, average earnings, average base earnings, average excess earnings and service shall be determined as of the date of the amendment or repeal, as the case may be. (Prior code § 32-1-18)

3.08.210 Termination of plans—By default.

In the event of termination or complete discontinuance of contributions under any of the plans defined in subdivisions 3, 4 or 5 of the subsection defining "system" in Section 3.08.010, the provisions of Section 3.08.220 shall apply. (Prior code 32-1-20)

3.08.220 Termination of plans—Procedure.

A. In the event any one or all of the plans defined in subdivisions 3, 4 or 5 of the subsection defining "system" in Section 3.08.010 are terminated in their entirety, the board shall prepare a list of all members, retired members, disabled members and beneficiaries, showing for each, as of the date of such termination, the following:

1. For each retired member, disabled member or beneficiary receiving benefits, the amount and terms of payment of his pension;

2. For each member entitled to a deferred pension as provided in Sections 3.32.040 and 3.36.040, the amount and terms of payment of such pensions;

3. For each member not entitled to a deferred pension, the amount of his accrued pension computed as of the date of such termination in the same manner as set forth in Sections 3.32.030(A) and 3.36.030(A), and the terms of payment of such pensions for a member shall be in accordance with those sections, unless modified by a previous election of an option as provided in Chapter 3.40;

B. The benefits shown on the list in subsection A of this section will then be separated into three separate lists showing the benefits arising separately under each of the three trust funds. Each of these lists will then be separated into "priority classes" for each fund separately as follows:

1. Fund A.

a. Priority Class A. Pensions for disabled members and benefits payable on the death of a disabled member under Section 3.28.070.

2. Funds B and C.

a. Priority Class A. Pensions for members who have reached their sixty-fifth birthdays, pensions for retired members who have reached their sixty-fifth birthdays, and pensions for retired members and for beneficiaries and benefits for all deceased members.

b. Priority Class B. For persons not in Priority Class A pensions for members, retired members who are receiving benefits and members entitled to deferred benefits.

c. Priority Class C. For persons not in Priority Classes A and B, benefits for all other members and beneficiaries.

C. The priority classes listed in subsection B of this section shall be observed separately for Funds B and C respectively. The board will then arrange for the liquidation of all assets held in each fund and prepare a statement of the liquidation value of the assets of such fund. The board will then arrange for the application separately of the assets of each of the Funds A, B and C respectively to purchase annuities from an insurance company or companies selected by the board, to provide in full, if such assets are sufficient to do so, the benefits in Priority Class A for each fund separately. In the case of Funds B and C, if such assets are not sufficient to purchase one hundred percent of benefits in Priority Class A, they shall be applied in full to purchase such uniform percentage as can be purchased. If the assets of any fund are more than sufficient to purchase one hundred percent of the benefits in Priority Class B, the remainder shall be applied in the same manner to purchase all or a uniform percentage of the benefits in Priority Class C. If the remaining assets in any of the three funds are more than sufficient to purchase one hundred percent of the benefits in Priority Class C, the remainder shall revert

back to the metropolitan government. Upon completion of the steps specified above, the plan involved shall be considered terminated and no member or beneficiary shall have any right or claim to benefits under this system.

D. In the event of planned termination, the benefit of any highly compensated active or former employee is limited to a benefit that is nondiscriminatory under Internal Revenue Code Section 401(a)(4). (Ord. 95-1452 § 31, 1995; prior code § 32-1-19)

3.08.230 Change or error in records—Effect on payment received or contribution paid.

A. If any change in records or error results in any member or beneficiary receiving from the system more or less than he would have been entitled to receive had the records been correct or had the error not been made, the board, upon discovery of such error shall correct the error by adjusting, as far as practicable, the payments in such manner that the benefits to which the member or beneficiary was correctly entitled shall be paid. In the event a member or beneficiary receives more pension benefit than he was entitled to receive, the board shall collect, by way of reducing pension payments or through a lump sum repayment, only the amount overpaid during the one-year period prior to discovery by the benefit board of such change in records or such error which resulted in the pension overpayment. In the event a member or beneficiary receives less pension benefit than he was entitled to receive, the board shall reimburse, by way of increasing pension payments or in a lump sum payment, only the amount underpaid during the six-year period prior to discovery by or notice to the benefit board of such change in records or error which resulted in the underpayment of the pension benefit to the member or beneficiary. Notwithstanding the foregoing, the correction of errors resulting in an underpayment of a pension, made in calculating a disability or service pension awarded from and after January 1, 1987, and until January 1, 1997 shall not be subject to the six-year limitation. Correction of errors made in computing pensions for persons receiving a disability pension and converting to a service pension from and after January 1, 1984, and until January 1, 1997, which resulted in an underpayment of pensions shall also not be subject to the six-year limitation.

B. If the change in records or error results in any member contributing to the system more or less than should have been contributed had the records been correct or had the error not been made, the board, upon discovery of such error, shall correct the error by adjusting, as far as practicable, the contribution payable by the member so that the total contributions paid shall equal the amount

payable had the records been correct or had the error not been made.

C. Repayment of any amount overpaid to any member or beneficiary may be waived by the board where such overpayment was made through error committed by the board's staff and the board determines that the member or beneficiary:

1. Was without fault or knowledge of the error;
2. Did not participate in or induce the additional payment;
3. Had no way under the circumstances to know or, by the exercise of reasonable diligence, to know that an overpayment had been made; and
4. Would, due to repayment, be deprived of income required for ordinary and necessary living expenses. No such waiver shall be granted if it is determined that such waiver would, if granted, adversely affect the actuarial soundness of the metropolitan benefit system; provided further, that no waiver shall be final or take effect until the same shall have been approved by resolution of the metropolitan council.

D. Nothing in this section shall be construed to affect or limit the authority of the metropolitan government to collect all sums gained in any claim or action arising under Section 3.08.240 of the Metropolitan Code of Laws. (Amdt. 1 with Ord. 96-540 § 4, 1996; prior code § 32-1-14)

3.08.240 Attempt to defraud system prohibited—Legal proceedings—Penalty.

No person shall knowingly and wilfully make any false statement or shall falsify or permit to be falsified any records of the system, in any attempt to defraud the system in any manner. The metropolitan government shall have the right to bring appropriate legal proceedings, both civil and criminal, against such person for his commission of any act which is a cause of action under the civil or criminal laws of this jurisdiction which falls within the coverage of this section. Upon his conviction in a criminal proceeding or upon the rendition of a judgment against him in a civil proceeding, in either case having been rendered by a court having jurisdiction of the parties and the subject matter, such person shall forfeit all amounts, rights and benefits which he would otherwise be entitled to receive under the provisions of the system. (Prior code § 32-1-16)

3.08.250 Firefighter health—Presumptions concerning impairment in course of employment.

A presumption is hereby established that any impairment of health of a firefighter caused by the disease of

cancer resulting in hospitalization, medical treatment, or any disability, shall be presumed (unless the contrary be shown by competent medical evidence) to have occurred or to be due to accidental injury suffered in the course of employment. Any such condition or impairment of health which results in death shall be presumed (unless the contrary be shown by competent medical evidence) to be a loss of life in the line of duty, and to have been in the line and course of employment, and in the actual discharge of the duties of his position, or the sustaining of personal injuries by external and violent means or by accident in the course of employment and in the line of duty. Provided, however, that such firefighter shall have successfully passed a physical examination prior to such claimed disability, or upon entering upon his metropolitan government employment, and such examination fails to reveal any evidence of the condition of cancer. (Ord. 91-1683 § 1, 1991)

Chapter 3.12

MEMBERSHIP

Sections:

3.12.010 Application for membership—Excludable impairments.

3.12.020 Eligibility and participation—Conditions.

3.12.030 Eligibility and participation—Transfer from former plan.

3.12.031 Metropolitan employee benefit system—Division A and Division B.

3.12.040 Continuation of membership.

3.12.050 Termination of membership.

3.12.060 Change in eligibility status—Effect on participation.

3.12.010 Application for membership—Excludable impairments.

A. Each person shall, as a condition precedent to becoming a member, make written application to the board by filing a completed form, designated, "Application for Membership—Metropolitan Employee Benefit System." The form shall be supplied by the board and shall contain such information as the board may require.

B. The board may at any time delete from any application an excludable impairment and it shall not thereafter be reinstated; provided, that if a member established to the satisfaction of the board that he has not incurred medical expenses to an excludable impairment endorsed on his application for ten years after becoming a member, such excludable impairment shall no longer apply, and the member shall thereafter be entitled to full coverage for

benefits provided in Chapter 3.24 and Sections 3.28.010 through 3.28.080. (Ord. 92-159 § 10, 1992; prior code § 32-1-21)

**3.12.020 Eligibility and participation—
Conditions.**

Each person who first becomes a metropolitan employee after, but not on, April 1, 1963, shall, as a condition of employment, become a member of the system as of the first day of the month next following completion of six full calendar months of current service. This section shall not apply to any employee who becomes eligible to participate in the state retirement for county paid judges pension plan and elects to do so. (Ord. 92-159 § 11, 1992; prior code § 32-1-22)

**3.12.030 Eligibility and participation—
Transfer from former plan.**

A. Each person who is a metropolitan employee on April 1, 1963, and who was a participant in a former plan, may voluntarily elect in writing to transfer his participation from such former plan and become a member of the system as of April 1, 1963, subject to written application to transfer received by the board on or before November 15, 1964. Each person who is a metropolitan employee on April 1, 1963, and was not a participant in a former plan may voluntarily elect to become a member of the system as of April 1, 1963, subject to written application to participate received by the board on or before November 15, 1964.

B. In the event such employee does not apply as provided in this section on or before November 15, 1964, then his right to apply shall terminate on November 16, 1964. A member of such former plan who voluntarily elects to transfer to the system in accordance with this provision shall cease to be a participant of the former plan and shall have no further rights under such former plan, and all contributions made by him after April 1, 1963, under a former plan shall be transferred to the trust fund, and all his contributions standing to his credit on March 30, 1963, to which he would have been entitled as a refund if he were to have then terminated, shall be transferred to the trust fund. All such amounts transferred to the trust fund shall be credited to his individual account in the member's contribution account.

C. If such a member dies, retires or terminates his employment prior to the date social security coverage is effective for him, he shall be eligible to receive from the system benefits in the same manner and amount as though he had not transferred from the former plan. After the date social security coverage is effective for such member, he

shall have no right thereafter to any benefit except in accordance with the system.

D. Each person who is a metropolitan employee on January 1, 1971, and who was then a participant in a former plan or was not a member of any plan may voluntarily elect to transfer his participation to become a member of the metropolitan system as of January 1, 1972, subject to receipt by the board of his written election on or before such date, prior to January 1, 1972, as determined by the board. (Prior code § 32-1-23)

**3.12.031 Metropolitan employee benefit
system—Division A and Division B.**

A. As of July 1, 1995, the "system" of benefits as defined in Section 3.08.010 shall be divided into Division A and Division B as provided herein. All eligible employees with an effective hire date of July 1, 1995 or later shall only be eligible to be participants in Division B.

B. Each person who is a metropolitan employee as of June 30, 1995, and who qualifies to be a member of Division A of the system, may voluntarily elect in writing to transfer his participation from Division A to Division B as of January 1, 1996, subject to written application approved by the board. The written application to transfer to Division B must be received by the board before January 1, 1996.

C. In the event a member who qualifies to transfer from Division A to Division B does not provide written application prior to January 1, 1996, his right to apply shall terminate as of January 1, 1996. A member of Division A who voluntarily elects to transfer to Division B in accordance with this provision shall cease to be a participant in Division A and shall have no further rights under Division A. All contributions made by such transferring employee prior to January 1, 1996 shall be transferred to Division B. All such amounts transferred shall continue to be credited to the individual account in the member's contribution account for Division B.

D. Nothing in the ordinance codified in this section shall impair or diminish the rights and privileges of members, retired members, or survivors remaining in Division A, and such rights and privileges shall continue without impairment as obligations and liability of the metropolitan government. (Ord. 96-540 § 5, 1996; Amdt. 1 to Ord. 95-1452, 6/20/95; Ord. 95-1452 § 32, 1995)

3.12.040 Continuation of membership.

Once a metropolitan employee becomes a member, he shall continue to be a member as long as he is a metropolitan employee, and he cannot cease to be a member while he is a metropolitan employee. No member shall be eligible to receive any benefits provided under Chapters 3.32,

3.33, 3.36, 3.37 or 3.40 during the time that he is a metropolitan employee. This section shall not apply to any employee who becomes eligible to participate in the state retirement for county paid judges pension plan and elects to do so. (Ord. 95-1452 § 33, 1995; prior code § 32-1-24)

3.12.050 Termination of membership.

A. Upon a member's termination in the metropolitan government, he shall continue to be a member, but in no case shall he be entitled to be covered for benefits provided in Chapters 3.20, 3.24 and Sections 3.28.010 through 3.28.080 and Sections 3.29.010 through 3.29.080; provided, that he shall cease to be a member upon:

1. Withdrawal from the appropriate trust fund of his employee contributions for pensions, regardless of the length of his service;

2. Death, unless a beneficiary is entitled to receive a benefit from the appropriate trust fund;

3. Termination of the member at any time with prejudice, where "prejudice" means the termination of a member as a result of (a) his conviction by a court of competent jurisdiction of embezzlement or larceny of public funds or property, (b) malfeasance in office, or (c) the forcing of a member to make restitution of any funds or properties similarly taken by the member which resulted in his misconduct or termination. Any member who withdraws membership from the metropolitan employee benefit plan to participate in the state retirement for county paid judges pension plan shall continue to remain eligible for the benefits provided in Chapters 3.20, 3.24 and Section 3.28.090. (Ord. 95-1452 §§ 34, 35, 1995; prior code § 32-1-25)

3.12.060 Change in eligibility status—Effect on participation.

A. If a member ceases to be an eligible employee but continues to be a metropolitan employee, he shall leave his employee contributions for pensions in the appropriate trust fund and continue to be a member, but shall not thereafter be entitled to participate in benefits provided in Chapters 3.20, 3.24 and Sections 3.28.010 through 3.28.080 and Sections 3.29.010 through 3.29.080, and he shall, during such time that he is not an eligible employee, make no contributions to the system whatsoever.

B. If any metropolitan employee who is not an eligible employee becomes an eligible employee, he shall thereupon contribute to the system and participate in all benefits provided by the system if he then has six months of service under the system; or he shall enter the system as provided in Section 3.12.020. Provided, any member who becomes eligible to participate in the state retirement for county paid judges pension plan and elects to transfer to the state retirement for county paid judges pension plan

shall be allowed to withdraw his contributions or pension from the fund; further, such employee shall remain entitled to participate in the benefits provided in Chapters 3.20, 3.24 and Section 3.28.090. (Ord. 95-1452 § 36, 1995; prior code § 32-1-26)

Chapter 3.16

CONTRIBUTIONS AND FINANCING

Sections:

3.16.010 Contributions—Generally.

3.16.020 Employee contributions—Medical care and life insurance.

3.16.030 Employee contributions—Pensions.

3.16.040 Metropolitan government contributions—Medical care and life insurance.

3.16.050 Metropolitan government contributions—Pensions.

3.16.010 Contributions—Generally.

A. Contributions by members to the system who are eligible employees shall include medical care contributions and dental care contributions. Such contributions shall be payable in accordance with this chapter. Contributions by members shall be paid by payroll deductions. The financial requirements of the system for all benefits, including pension benefits, disability benefits, life insurance benefits and medical care benefits or services shall be determined by the board in accordance with this chapter. Pension contributions shall be paid into Fund B or Fund C as the case may be. Life insurance contributions and medical care contributions shall be paid into the insurance account.

B. In the case of self-insured medical care benefits or services provided by a health maintenance organization, the financial requirements as to the amount of monthly employee contributions and contributions by the metropolitan government shall be determined by the board with the advice of the board's consulting actuary and other consultants, including the contributions estimated to be required in each fiscal year or portion of each fiscal year to meet the expected cost of benefits together with the maintenance of an adequate reserve in the insurance account to cover fluctuations in the amount of benefits or cost of services from month to month and any anticipated increase in the cost of medical care benefits or services in each fiscal year or portion of each fiscal year. The investment committee of the board, constituted as provided in Section 13.04 of the Metropolitan Charter, shall be authorized and empowered under the authority described in Section 3.08.130 of this title to invest such portion of the insurance

account as the board may direct. The amount of such financial requirements shall be included in the annual budget and tax levy ordinances of the metropolitan government as provided in Section 13.05(f) of the Metropolitan Charter. (Ord. 2001-776 § 1, 2001; Ord. 92-159 § 12, 1992; prior code § 32-1-27)

3.16.020 Employee contributions—Medical care and life insurance.

A. Only members who are eligible employees and are covered for medical care benefits in accordance with Chapter 3.24 shall pay employee contributions for medical care benefits for each payroll period during which he is covered for such benefits. The board shall establish, in its discretion, a contribution rate for life insurance benefits, a contribution rate for medical care benefits and a contribution rate for dental care benefits for covered members.

B. Effective July 1, 1979, the metropolitan government shall contribute one hundred percent of the contribution rate established for life insurance benefits and the covered employee will not be required to make any contribution for life insurance coverage.

C. Effective July 1, 1979, the metropolitan government shall contribute seventy-five percent of the contribution rate established for medical care benefits and the covered employee shall contribute twenty-five percent of the contribution rate established for medical care benefits.

D. The metropolitan government shall contribute one hundred percent of the contribution rate for individual coverage for dental care benefits for all eligible employees. Eligible employees shall have the option of carrying such additional coverage as offered by the board for eligible dependents but all such costs shall be borne one hundred percent by the covered employee and no contribution shall be made by the metropolitan government for the additional coverage.

E. Such benefits shall become effective as established under the respective contracts as approved by the board. Employee contributions shall commence as established by board policy. All contributions paid by the employee shall be prepaid by payroll deduction thirty days in advance of the coverage. (Ord. 95-1452 §§ 37, 38, 1995; amended during 10/94 supplement; Ord. 92-159 §§ 13, 14, 1992; prior code § 32-1-28)

3.16.030 Employee contributions—Pensions.

A. Effective January 1, 1974, each member who is an eligible employee and is covered for pensions in accordance with Sections 3.28.010 through 3.28.080 and Chapters 3.32 and 3.36 of this title shall pay employee contributions for pensions which, for each calendar year, shall be the sum of subdivisions 1 and 2 as follows:

1. Three percent of earnings subject to social security tax; and

2. Six percent of earnings not subject to social security tax.

B. The amount of any member's employee contributions for pensions payable in any payroll period shall be computed, consistent with the provisions of this section, to the extent deemed administratively feasible, and in a manner determined by the board. Employee contributions for pensions shall be payable by a member after and not before he has completed six months of service. Employee contributions for pensions made by a member who was a metropolitan employee on March 30, 1963, shall be payable from April 1, 1963; except, that no such contributions shall be payable in respect of any payroll after April 1, 1963, for which contributions were paid under a former plan by a metropolitan employee. A member's employee contributions for pensions shall be payable for the months of "back service," determined as the number of months of service after April 1, 1963, and after he has completed six months of service, but before the date of his first pensions contribution to the system. Payment of such "back service" contributions shall be made by doubling his employee contributions for pensions in each payroll period commencing with his first pension contributions to the system and thereafter until he has contributed for as many months of "back service."

C. Employee contributions for pensions made by a member who was a metropolitan employee on January 1, 1972, and became a member as of that date shall be payable commencing from that date. The provisions of this section shall not apply to any employee who becomes eligible to participate in the state retirement for county paid judges pension plan and elects to do so.

D. As of January 1, 1987, no member, who is a present eligible employee, and no future member of the system shall be required to make an "employee contributions for pensions" payment on earnings earned for work performed on or after January 1, 1987.

E. Effective January 1, 1987, the metropolitan government shall assume responsibility for the "employee contributions for pensions" previously provided for under this section. Such contributions shall be the sum of subdivisions 1 and 2 as follows:

1. Three percent of earnings subject to social security tax; and

2. Six percent of earnings not subject to social security tax.

F. As of January 1, 1987, all existing member contribution accounts shall be frozen. Only contributions by employees for work performed prior to January 1, 1987, may be added to the account. Member contributions to this

account, and any interest that may accrue to the employee's account under the terms of the system, will be refundable under the same terms and conditions that existed prior to January 1, 1987.

G. No contribution made by the metropolitan government shall accrue to the member contribution account. All contributions made by the metropolitan government, and specifically those assumed as of January 1, 1987, shall remain a part of the fund upon a member's termination.

H. The provisions of subsections D through G of this section shall not apply to employees of the metropolitan board of education prior to July 1, 2001. From and after July 1, 2001 subsections D through G of this section shall apply to employees of the metropolitan board of education who are members of the metropolitan employee benefit system and any funds deducted from employee pay for employee contributions for pensions from and after July 1, 2001 shall be refunded to the affected employees. In applying subsections D through G of this section to employees of the metropolitan board of education, "July 1, 2001" shall be substituted for "January 1, 1987" and "metropolitan board of education" shall be substituted for "metropolitan government" wherever appearing in said subsections. Nothing in this subsection shall be construed to affect any employee pension contributions prior to July 1, 2001. (Ord. 2001-776 § 2, 2001; Prior code § 32-1-29)

3.16.040 Metropolitan government contributions—Medical care and life insurance.

A. The metropolitan government shall contribute monthly to the insurance account an amount which, together with employee contributions, shall be sufficient to provide either:

1. Monthly premium payments for insured life insurance and medical care benefits provided by the system; or
2. In the base of self-insured benefits, the administration charges made by the administrator together with the contribution to be made by the metropolitan government determined in accordance with Section 3.16.010; or
3. The amount required to finance the cost of services through a health maintenance organization.

B. Members of the metropolitan council, during their term of office, shall be authorized to participate in the health insurance program under the same terms and conditions as are available for regular metropolitan government employees. The benefits and contribution rates shall be equivalent to those benefits and rates paid by metropolitan government employees. Each councilman shall have the option of participating in the program by notifying the employee benefit board of their desire to participate in the

program at any time during their term of office. (Prior code § 32-1-30)

3.16.050 Metropolitan government contributions—Pensions.

A. The metropolitan government shall contribute to the fund not later than June 30th of each fiscal year an amount equal to a percentage of the annual payroll of members who are eligible employees and who are covered for pension benefits, in accordance with Sections 3.28.010 through 3.28.080, Sections 3.29.010 through 3.29.080, and Chapters 3.32, 3.33, 3.36 and 3.37, the percentage to be known as the "employer contribution rate." The employer contribution rate applicable for any fiscal year shall be determined by resolution of the board at a public meeting held at least four months prior to the beginning date of such fiscal year and filed with the metropolitan clerk and shall be at least the smaller of (1) three-tenths of one percent plus the employer contribution rate applicable to the prior fiscal year, or (2) an employer contribution rate, which shall be the ratio of the actuarially determined contribution level to the amount of the valuation payroll, on the basis of an actuarial valuation of the system made as of the last day of the fiscal year preceding the adoption of the contribution rate. The actuarially determined contribution level shall be the sum of normal cost and a percentage of unfunded past service liabilities, such percentage to be determined by the board at a level at least equal to the actuarial valuation interest rate. The actuarial valuation shall be made by a qualified or accredited actuary according to accepted and sound actuarial principles and methods and based on actuarial assumptions which have been recommended by said actuary and approved by the board.

B. The total amount of employer contribution shall be divided on a sound actuarial basis between the six Trust Funds, A through F, to provide the benefits to be paid from each of such trust funds under the plans defined in Section 3.08.010 in accordance with the last actuarial valuation as determined by such actuary and approved by the board. The "Metropolitan Employee Benefit Trust Fund of the Metropolitan Government of Nashville and Davidson County" as it exists on the date of the amendment codified in this section, shall be equitably allocated after such date to create Trust Funds A through F respectively on the basis of an actuarial valuation of the system as determined by such actuary and approved by the board. Provided, the metropolitan government shall not contribute to the fund for those employees who are eligible to participate in the state requirement for county paid judges pension plan and who elect to do so. (Ord. 95-1452 §§ 39, 40, 41, 1995; prior code § 32-1-31)

Chapter 3.20

LIFE INSURANCE BENEFITS

Sections:

3.20.010 Eligibility for benefits.

3.20.020 Determination of benefits.

3.20.030 Life contract requirements—Benefits and features.

3.20.040 In-line-of-duty death benefit.

3.20.010 Eligibility for benefits.

Each member shall be covered for life insurance benefits during all times that he is an eligible employee and shall be entitled to benefits provided by a “life contract,” which shall be a contract providing group life insurance, issued to the board by the insurer selected to underwrite life insurance benefits pursuant to this chapter. For the purposes of Chapters 3.08 through 3.44, members shall include those persons who become eligible for the state county paid judges pension plan and elect to participate in such system. (Prior code § 32-1-32)

3.20.020 Determination of benefits.

Life insurance benefits on the life of any covered employee shall be in accordance with the life contract, and not in accordance with the provisions of this chapter. (Prior code § 32-1-33)

3.20.030 Life contract requirements—Benefits and features.

The life contract shall include benefits and features described in this section. The board shall determine the content and wording of the contract consistent with the concept that sound actuarial principles and practical administrative methods be followed. Any word or expression set out below in this section that is not defined in Chapters 3.08 through 3.44 shall have the meaning established by the board in accordance with usual terminology in the insurance industry and in accordance with such life contract. The life contract shall include provisions for the following:

A. Life insurance on a covered member’s life at any time shall be based on his annualized rate of earnings (annualized earnings) and age last birthday (insuring age) on the preceding July 1st or on his date of becoming a member if he was not a member on a preceding July 1st. Changes in amounts of life insurance benefits for any covered member by reason of his annualized earnings or insuring age shall be effective only on a July 1st once per fiscal year.

B. The amount of life insurance benefit available to employees shall be in accordance with the contract as authorized by the board.

C. Waiver of premium benefits for disability occurring prior to age sixty shall be included. The word “disability” shall have the definition as is customary with the insurer and not as otherwise defined in the system.

D. Conversion privileges shall be included.

E. No medical examination shall be required for purposes of any life insurance benefits.

F. Other usual types of provisions shall be included as the board and the insurer may mutually agree. (Ord. 96-540 § 6, 1996; Ord. 92-159 §§ 15, 16, 1992; prior code § 32-1-34)

3.20.040 In-line-of-duty death benefit.

A. As of January 1, 1993, any metropolitan employee whether regularly employed or not, who loses their life as a direct result of an act occurring or a thing done or a risk taken which, as determined in the discretion of the board, was required of the employee in the performance of the employee’s duties as a metropolitan employee shall be entitled to an indemnity of one hundred thousand dollars paid to the estate of the metropolitan employee. Any amount payable under this section shall be in addition to benefits otherwise provided by the metropolitan system of employee benefits; however, any amount payable under this section shall constitute an indemnity in lieu of all other claim of liability as may be claimed in the Charter or claimed otherwise against the metropolitan government. This section shall not, however, establish eligibility or rights to any other benefit provided by the metropolitan system.

B. The board, together with actuarial consultants and legal counsel, shall prepare specifications for submission to insurers interested in underwriting benefits provided by this section. Except as further provided in this section, the director of finance shall have the authority to determine the extent to which any or all of the indemnity shall be self-insured by metropolitan government and shall so advise the board. Notice of the request for bids from insurers shall be published in two newspapers of wide circulation in the county at least sixty days prior to the date specified by the board for the receipt of such bids. On the basis of bids received by the board, the board shall select an insurer on the basis of low retention consistent with low rates. No insurer shall be eligible for consideration unless its volume of annual business with respect to accidental death or occupational accidental death coverage is at least ten times the premium volume of premiums required to underwrite benefits contained in this section. Upon the selection of an insurer, the board shall be authorized and empowered to

execute a contract with such insurer to effectuate coverage. Any indemnity payable under this section on account of a death occurring prior to the date such a contract has been executed shall be self-insured and paid by metropolitan government. For the purposes of Chapters 3.08 through 3.44, members shall include those persons who become eligible for the state county paid judges pension plan and elect to participate in such system. (Ord. 95-1452 § 47, 1995; Ord. 92-462 § 2, 1993; prior code § 32-1-48.1)

Chapter 3.24

MEDICAL CARE BENEFITS

Sections:

- 3.24.010 Eligibility for benefits.**
- 3.24.020 Benefit requirements.**

3.24.010 Eligibility for benefits.

A. Each member shall be covered for medical care benefits during all times that he is an eligible employee and shall contribute for such benefits in accordance with Section 3.16.020. For the purposes of Chapters 3.08 through 3.44, members shall include those persons who become eligible for the state county paid judges pension plan and elect to participate in the system.

B. Elected officials who were participants in the comprehensive health care plan during the time they held office may elect to continue the health care plan, provided they pay the full amount of the premium without any subsidy from metropolitan government; provided, however, those elected officials holding office for eight years or more and those persons receiving a pension from the state county paid judges pension plan may elect to continue the health care plan, provided they pay the contribution rates equivalent to those rates paid by metropolitan government employees. Dependents of metropolitan government officials may be continued under the plan provided they were covered during the elected official's tenure in office. Dependents may also continue to participate in the comprehensive health care plan upon the elected official's becoming deceased if they were covered by the plan during the life of the elected official.

C. Notwithstanding any other provisions of the system to the contrary, eligible employees may decline coverage for medical and/or dental care benefits upon demonstrating to the board that such employee has other medical and/or dental care coverage. The policies for declining such benefits and demonstrating alternative coverage shall be as approved by the board. The board shall also adopt policies governing the circumstances, if any, under which an employee who has declined medical or dental care benefits

coverage may elect to begin such coverage. (Ord. 2002-1235 § 1, 2002; Ord. 92-159 § 17, 1992; Ord. 90-1115 § 1, 1990; prior code § 32-1-35)

3.24.020 Benefit requirements.

A. The medical care benefits provided shall be generally consistent with and as liberal as those contained in the group insurance contract in force on January 1, 1973.

B. The medical care benefits or services to be provided by the system shall be announced to the eligible employees through the medium of a booklet describing the benefits or services provided.

C. Any covered member may voluntarily elect to provide coverage for his dependents, meaning an eligible employee's spouse and each dependent child.

D. Coverages for members shall be both occupational and nonoccupational, but coverages for dependents shall be nonoccupational only. If the board determines that it is financially feasible, the board is authorized to establish a panel of preapproved medical providers to furnish treatment for in-line-of-duty injuries, to be known as the "in-line-of-duty medical treatment network." The board is authorized to conduct a pilot in-line-of-duty medical treatment network for a period of up to two years while continuing to allow coverage of occupational injuries under the medical benefit program. At the end of the pilot period, which shall not exceed two years, from January 1, 2004, the pilot program shall terminate and the board will determine whether to continue the network. Should the board determine to continue the in-line-of-duty medical treatment network, then medical care benefits will no longer cover occupational injuries. Any in-line-of-duty medical treatment network shall be established in conformity with Section 13.12 of the Charter of the metropolitan government.

E. Medical care benefits provided by the system shall not duplicate any benefit provided any member under Section 13.12 of the Charter nor any benefit provided by any group medical care insurance program.

F. All general sessions judges shall be eligible to continue membership in the medical care system upon retirement to the same extent and under the same terms and conditions as are provided for retired members, as defined in Section 3.08.010 and this section. Premiums due from the retired judges shall be payable on a semiannual basis to the employee benefit board. Continued membership is optional with each judge.

G. When medical treatment is rendered to a member for an in-line-of-duty injury, at the expense of the metropolitan government, and was caused under circumstances creating a legal liability against some person other than the metropolitan government to pay damages, the injured em-

ployee shall have the right to receive benefits as provided herein, and such injured employee may pursue his remedy by proper action in a court of competent jurisdiction against such person. In the event of recovery against such third person by the injured employee by judgment, settlement or otherwise, and the government's maximum liability for benefits as provided herein has been fully or partially paid and discharged, the government shall have a subrogation right, therefor, against such recovery for medical treatment. Such settlements shall be reported to and approved by the board. (Ord. BL2003-58 § 1, 2003; Ord. 95-1452 §§ 42, 43, 1995; Ord. 92-159 § 18, 1992; prior code § 32-1-36)

Chapter 3.28

DISABILITY PENSIONS—DIVISION A

Sections:

- 3.28.010 Disability defined.**
- 3.28.020 Eligibility for pension—Policy generally.**
- 3.28.030 Eligibility for pension—Disabled not in line of duty.**
- 3.28.040 Eligibility for pension—Disabled in line of duty.**
- 3.28.050 Determination and payment of pension.**
- 3.28.060 Board authority—Disability report required—Resuming work—Termination of pension.**
- 3.28.070 Survivor benefits—Conditions for payment.**
- 3.28.080 Survivor benefits—When member died in line of duty.**
- 3.28.100 Questionnaire requirements for recipients.**

The provisions of this chapter shall apply only to those members who are covered under Division A of the system. (Ord. 95-1452 § 45, 1995)

3.28.010 Disability defined.

A. A member whose termination occurs because of permanent disability while he is a fireman or policeman or in the line of duty, as provided in Section 3.28.040, shall be deemed to be “disabled” (1) if he becomes permanently disabled as a result of medically determinable bodily injury or disease or mental disorder so that during the continuation of his disability for a period of two years following such disability he is unable to perform the duties of any occupation in the metropolitan government which is offered to him at a rate of earnings equal to or higher than he was receiving at the time of his disability for which he is reasonably capable by reason of training, education or experience, and (2) if, during the continuation of his disability for a period beyond such two years, he is incapable of engaging in any business or occupation or to perform any work for compensation, gain or profit, so that the sum of his earnings while disabled and his gross disability pension does not exceed one hundred percent of his frozen earnings, subject, however, to all other requirements of this chapter.

B. A member whose termination occurs because of disability, other than in the line of duty, and who is then not a fireman or policeman, shall be deemed to be “dis-

abled” if he becomes permanently disabled as a result of medically determinable bodily injury or disease or mental disorder so that during the continuation of his disability he is incapable of engaging in any business or occupation or to perform any work for compensation, gain or profit, so that the sum of his earnings while disabled and his gross disability pension does not exceed one hundred percent of his frozen earnings; subject, however, to all other requirements of this chapter.

C. Loss by severance of both hands at or above the wrists, or both feet at or above the ankles, or one hand above the wrist and one foot at or above the ankle, or the complete irrecoverable loss of the sight of both eyes shall conclusively determine disability, and in such event, the disability pension deduction of such a disabled member shall be zero, notwithstanding anything in this chapter to the contrary.

D. Notwithstanding any provision in this section to the contrary, disability shall not include any physical or mental condition which results directly from:

1. Injury intentionally self-inflicted;
2. Injury or disease resulting from military service;
3. Injury or disease suffered or contracted prior to the date last hired as a metropolitan employee, if the date of hire was after April 1, 1963. (Prior code § 32-1-41)

3.28.020 Eligibility for pension—Policy generally.

Only a member who, at the time of occurrence of disability, is an eligible employee and is not specifically excluded by the Metropolitan Charter from having a pension from the system, shall be covered for a disability pension in accordance with this chapter. (Prior code § 32-1-42)

3.28.030 Eligibility for pension—Disabled not in line of duty.

A member who is covered for a disability pension, who has completed ten years of credited service and who becomes disabled, as defined in Section 3.28.010, shall be eligible to receive a disability pension, subject to all applicable requirements of this chapter. (Prior code § 32-1-43)

3.28.040 Eligibility for pension—Disabled in line of duty.

A member who is covered for a disability pension, who becomes disabled, as defined in Section 3.28.010, in the line of duty, shall be eligible to receive a disability pension, provided his disability is a result, directly or indirectly, of an act occurring or thing done or risk taken which, as determined in the discretion of the board, was required of him in the performance of his duty as a metropolitan employee. Any metropolitan employee hired after

April 1, 1963, who is an eligible employee shall be deemed to be a member from his date of employment in the metropolitan government for purposes of this section. (Prior code § 32-1-44)

3.28.050 Determination and payment of pension.

A. The disability pension payable to a disabled member in any month shall be the amount of his "net disability pension." His net disability pension due in any month shall be the amount by which a disabled member's "gross disability pension" exceeds the sum of his social security primary benefit and his "disability pension deduction" applicable to that month.

B. The gross disability pension of a disabled member shall be computed as sixty percent of his monthly average earnings over the last twelve months preceding retirement, plus an additional ten percent of his monthly average earnings over the last twelve months preceding retirement, provided he has at least one dependent child.

C. A disability pension shall be payable until age sixty-five, except as otherwise provided in Section 3.32.030C, and during the lifetime and continuation of disability of a member commencing after his benefit application has been filed and following the board's determination that he is a permanently disabled member; except, that no payment shall be due or payable until all his sick leave, salary continuation or vacation benefits of whatever kind may be then provided to him by the metropolitan government are exhausted; provided further, however, that if a disabled member is eligible to receive a monthly disability pension until he has attained age sixty-five, the disability pension shall then cease and thereafter he shall be eligible to receive a normal retirement pension in accordance with Chapters 3.36 and 3.40; except, that his service shall include his entire period of disability prior to attaining age sixty-five as though his termination had never occurred, and the normal retirement pension shall be computed as though his earnings from the date his disability pension commenced had remained the same until his normal retirement date as his earnings prior to the date his disability pension commenced, notwithstanding any provision in the system to the contrary. The amendments made to this subsection by Ordinance 97-1018 shall have a retroactive application date of January 1, 1997.

D. When a disability pension is paid to a member for an in-line-of-duty injury, at the expense of the metropolitan government, and was caused under circumstances creating a legal liability against some person other than the metropolitan government to pay damages, the injured employee shall have the right to receive benefits as provided herein, and such injured employee and/or the metropolitan

government may pursue his/her remedy by proper action in a court of competent jurisdiction against such person. In the event of recovery against such third person by judgment, settlement or otherwise, the metropolitan government shall have a subrogation right against such recovery for the cost of the disability pension. The metropolitan government shall only collect its subrogation interest when the employee has been made whole by settlement, judgment or otherwise. Such settlements shall be reported to and approved by the board. (Ord. 2002-1233 § 1, 2002; Ord. 97-1018 §§ 6, 10 (part), 1997; Ord. 92-159 § 19, 1992; prior code § 32-1-45)

3.28.060 Board authority—Disability report required—Resuming work—Termination of pension.

A. The board shall have the exclusive authority to determine the disability and continuation of disability of a disabled member and shall, in accordance with this section, determine the "disability pension deduction" of a disabled member. An applicant for a disability pension shall furnish to the board a "disability report," as provided in this section, and such other medical or other information as may reasonably be required by the board for the purpose of establishing disability. The board may secure additional medical or other evidence as it deems necessary and appropriate. On the basis of the disability report, medical and other information as the board has assembled, the board shall thereupon determine whether or not the applicant is a disabled member, and if so shall determine the amount of his gross disability pension, disability pension deduction and net disability pension.

B. At least once each calendar year thereafter, the board shall require any disabled member who is receiving a disability pension and who has not reached his sixty-fifth birthday to submit a disability report and written proof satisfactory to the board that he is still disabled. At least once per year and no more frequently than monthly, the board may require a disabled member to file a disability report. The disability report shall show (1) whether or not social security benefits have been applied for, and if not, the report shall be accompanied by a copy of the letter from the social security administration stating that he is not eligible for social security benefits, (2) the amount, if any, of primary social security benefits that he is receiving, and (3) the amount of his earnings while disabled. The board, at each regular meeting, shall redetermine the disability pension deduction and net disability pension of all disabled members for whom all reports have been requested and received, or from whom reports have been voluntarily submitted, on the basis of the disability reports and any other information the board may reasonably re-

quire of the disabled member. The disability pension deduction of a disabled member shall be redetermined by the board in a practical manner as the monthly average, for the period of time covered by his last report, of his member's earnings while disabled. The disability pension deduction shall be the amount, if any, by which his frozen earnings is exceeded by the sum of his gross disability pension and his earnings while disabled. Any redetermined amount of net disability pension shall not be payable until the calendar month next following the month in which the board's redetermination is made.

C. 1. The board is authorized at any time to cause an investigation to be made of any pensioner being paid a disability pension because of medically determinable bodily injury or disease or mental disorder or disability due to injury suffered in the course of his employment. In gathering information concerning and in determining the existence and/or continuation of disability, the board may utilize the services of an insurance company, physicians, or any other entity deemed by the board to be suitable for such purpose. If, in the judgment of the board, such pensioner is able to resume work in the classified service, the pension shall cease upon the pensioner's being assigned to work in the classified service at the same, or substantially the same rate of pay being paid at the time the disability occurred; however, if the pensioner be a policeman or fireman, the pension shall cease upon the board's finding that the pensioner is able to resume active work in the same department in which such pensioner worked at the time the disability occurred and only upon such pensioner's being assigned to work in such department at the same, or substantially the same, rate of pay being paid at the time such pensioner was disabled. In all cases, the duties of such assigned position shall not be substantially less in authority or responsibility and shall be such that the pensioner can perform based on his training, education and experience.

2. Any pensioner able to resume work with the metropolitan government at a rate of pay less than he was receiving at the time of disability shall have his rate of pay supplemented by the board by the amount that the pensioner's current pay falls below the pensioner's prior rate of pay. Pay supplement shall not take into consideration any overtime pay, shift differential or other pay supplements, but shall be based solely upon the employee's base salary. The amount of salary supplement shall continue until the pensioner's current rate of pay exceeds the pensioner's prior rate of pay except the salary supplement shall not be diminished by any across-the-board pay increases given to Metro employees.

D. A pensioner who accepts the work assigned in the classified service shall receive credit for service under the

system, including the period of time during which he was receiving disability pension benefits; a pensioner who does not accept the work assigned in the classified service shall not receive credit for service during disability, even if substantially reemployed by Metro, although such member subsequently reemployed shall receive credit for service under the system for all months in which he was a metro employee.

E. A member whose disability pension has been terminated because he did not accept the work assigned in the classified service shall be entitled to apply for resumption of benefits, which right shall terminate upon the expiration of ten years after the member's last disability payment, or at age sixty-five, whichever occurs first; provided, that nothing in this paragraph shall be construed to limit the authority of the board to consider the total actual disability of a member who returns to employment with Metro after a period of disability and subsequently becomes disabled again while employed by Metro, notwithstanding such member's failure to reapply for benefits during the ten-year period.

F. A member whose disability pension has been terminated as provided for herein shall have the right to a hearing on any finding of fact and may submit any evidence to the board as he deems necessary, and the board shall reconsider its determinations.

G. "Disability," when applied to firemen or policemen, shall mean the inability and/or the incapacity to perform the duties of a fireman or policeman.

H. An employee returning to work in the classified service shall receive priority consideration in being assigned to the position he or she previously held based upon training, education and experience. Should this position not be available upon the employee's return to work, the employee shall be placed in that previous position as soon as that position becomes vacant and available. (Ord. 95-1452 §§ 44, 46, 1995; Ord. 93-795 § 1, 1993; Ord. 92-159 § 20, 1992; prior code § 32-1-46)

3.28.070 Survivor benefits—Conditions for payment.

A. If a disabled member dies prior to attainment of age sixty-five and while entitled to receive a disability pension, whether or not any pension payments have actually been made, a survivor benefit shall be payable thereafter under the following conditions:

1. To the deceased disabled member's widow until her death and thereafter to the natural guardian or guardians of such surviving dependent children, if any, of such deceased disabled member; otherwise, to the legal guardian or guardians of the surviving dependent children of the deceased disabled. Where a deceased member dies with

more than one set of surviving dependent children, benefits which are payable to natural or legal guardians under this subdivision 1 for the benefit of such surviving dependent children, shall be distributed per capita among the children so that each such dependent child shall share equally in the benefits so long as he remains a dependent child;

2. To the legal guardian or guardians of the surviving dependent children of a deceased disabled member for the benefit of such surviving dependent children when the deceased disabled member dies with no spouse surviving him.

B. The benefits provided by this section to be paid for the benefit of the surviving dependent children of a deceased disabled member shall terminate when there ceases to be a surviving dependent child of a deceased disabled member.

C. The amount of the survivor benefit shall equal seventy-five percent of the amount by which the member's disability pension exceeds seventy-five percent of the widow's social security benefit which she may receive; provided, that the amount of survivor benefit payable after the widow's age sixty-five shall not exceed the benefit that would have commenced at the member's age sixty-five, based on his average earnings at time of termination, in accordance with Option A, had said member's termination not occurred until he reached age sixty-five. (Ord. 91-1682 § 1, 1991; prior code § 32-1-47)

3.28.080 Survivor benefits—When member died in line of duty.

If a member who is an eligible employee dies and his death is the result, directly or indirectly, of an act occurring or thing done or risk taken, which, as determined in the discretion of the board, was required of him in the performance of his duty as a metropolitan employee, a survivor benefit shall be payable in accordance with Section 3.28.070 as though he had died after commencing to receive a disability pension benefit. (Prior code § 32-1-48)

3.28.100 Questionnaire requirements for recipients.

A. All persons on disability pension, under this Division, shall be required to fill out the questionnaire set out in this section. The questionnaire is to provide the employee benefit board information on persons receiving disability pensions. The questionnaire shall be submitted at least annually, in July of each year, commencing July, 1978, and such questionnaire shall be signed, and the following words shall be printed on the application above the signature: "Under penalties of perjury, I declare that I have

examined this application and to the best of my knowledge and belief it is true, correct and complete."

B. If a person on disability pension fails or refuses to fill out the questionnaire, or fails or refuses to provide the medical authorization herein provided for, the person on disability pension shall be terminated until such information is provided.

C. The following information shall be included:

1. The nature of the disability;
2. Person's attending physician;
3. The date of the person's last physical examination;
4. Changes in the person's physical condition;
5. Whether or not the person is presently employed;
6. If the person is employed, whether their earned income (i.e., wage or salary — not rent, interest, dividends or capital gains) exceeds their disability income;
7. Whether or not the person is willing to return to employment with the metropolitan government if a position can be secured for his employment;
8. The person on disability pension shall be required to submit proper medical authorization for the purpose of enabling the benefit board to secure pertinent medical records and reports.

D. In addition to the above questions, the board shall be authorized to include other pertinent questions concerning the person's physical condition; provided, however, that this questionnaire shall not apply to any individual who is on a disability pension who has attained the age of sixty-five. (Ord. 95-1452 § 48, 1995; prior code § 32-1-48.2)

Chapter 3.29

DISABILITY PENSIONS—DIVISION B

Sections:

- 3.29.010 Disability defined.**
- 3.29.020 Eligibility for pension—Policy generally.**
- 3.29.030 Eligibility for pension—Disabled not in line of duty.**
- 3.29.040 Eligibility for pension—Disabled in line of duty.**
- 3.29.050 Determination and payment of pension.**
- 3.29.060 Board authority—Disability report required—Resuming work—Termination of pension.**
- 3.29.070 Survivor benefits—Conditions for payment.**
- 3.29.080 Survivor benefits—When member died in line of duty.**
- 3.29.090 Questionnaire requirements for recipients.**

The provisions of this chapter shall apply only to those members who are under Division B of the system. (Ord. 95-1452 § 49 (part), 1995)

3.29.010 Disability defined.

A. A member whose termination occurs because of permanent disability while he is a fire fighter or policeman or in the line of duty, as provided in Section 3.29.040, shall be deemed to be “disabled” (1) if he becomes permanently disabled as a result of medically determinable bodily injury or disease or mental disorder so that during the continuation of his disability for a period of two years following such disability he is unable to perform the duties of any occupation in the metropolitan government which is offered to him at a rate of earnings equal to or higher than he was receiving at the time of his disability for which he is reasonably capable by reason of training, education or experience, and (2) if, during the continuation of his disability for a period beyond such two years, he is incapable of engaging in any business or occupation or to perform any work for compensation, gain or profit, so that the sum of his earnings while disabled and his gross disability pension does not exceed one hundred percent of his frozen earnings, subject, however, to all other requirements of this chapter.

“Disability,” when applied to a fire fighter or a policeman, shall mean the inability and/or the incapacity to perform the duties of a fire fighter or policeman.

B. A member whose termination occurs because of disability, other than in the line of duty, and who is then not a fire fighter or policeman, shall be deemed to be “disabled” if he becomes permanently disabled as a result of medically determinable bodily injury or disease or mental disorder so that during the continuation of his disability he is incapable of engaging in any business or occupation or to perform any work for compensation, gain or profit, so that the sum of his earnings while disabled and his gross disability pension does not exceed one hundred percent of his frozen earnings, subject, however, to all other requirements of this chapter.

C. Loss by severance of both hands at or above the wrists, or both feet at or above the ankles, or one hand above the wrist and one foot at or above the ankle, or the complete irrevocable loss of the sight of both eyes shall conclusively determine disability, and in such event, the disability pension deduction of such a disabled member shall be zero, notwithstanding anything in this chapter to the contrary.

D. Notwithstanding any provision in this section to the contrary, disability shall not include any physical or mental condition which results directly from:

1. Injury intentionally self-inflicted;
2. Injury or disease resulting from military service;
3. Injury or disease suffered or contracted prior to the date last hired as a metropolitan employee, if the date of hire was after April 1, 1963. (Ord. 95-1452 § 49(a), 1995)

3.29.020 Eligibility for pension—Policy generally.

Only a member who, at the time of occurrence of disability, is an eligible employee and is not specifically excluded by the Metropolitan Charter from having a pension from the system, shall be covered for a disability pension in accordance with this chapter. (Ord. 95-1452 § 49(b), 1995)

3.29.030 Eligibility for pension—Disabled not in line of duty.

A member who is covered for a disability pension, who has completed ten years of credited service and who becomes disabled, as defined in Section 3.29.010, shall be eligible to receive a disability pension, subject to all applicable requirements of this chapter. (Ord. 95-1452 § 49(c), 1995)

3.29.040 Eligibility for pension—Disabled in line of duty.

A member who is covered for a disability pension, who becomes disabled, as defined in Section 3.29.010, in the line of duty, shall be eligible to receive a disability pen-

sion, provided his disability is a direct result of an act occurring or thing done or risk taken which, as determined in the discretion of the board, was required of him in the performance of his duty as a metropolitan employee. Any metropolitan employee hired after April 1, 1963, who is an eligible employee shall be deemed to be a member from his date of employment in the metropolitan government for purposes of this section. (Ord. 95-1452 § 49(d), 1995)

3.29.050 Determination and payment of pension.

A. The disability pension payable to a disabled member in any month shall be fifty percent of his frozen earnings plus, provided he has at least one dependent child, an additional ten percent of frozen earnings, less any disability pension deduction. However, if he becomes eligible for Social Security disability benefits, the fifty percent factor in the previous sentence will be reduced to thirty percent, but no further reduction will be taken to offset Social Security. In no event will the total disability benefit, paid by Metro and Social Security, be less than the benefit Metro would have paid had the disability pensioner not qualified for Social Security disability benefits.

B. A disability pension shall be payable until the member's unreduced retirement age except as otherwise provided in Section 3.36.030C, and during the lifetime and continuation of disability of the member commencing after his benefit application has been filed and following the board's determination that he is a permanently disabled member, except that no payment shall be due or payable until all his sick leave, salary continuation, or vacation benefits of any kind which may be then provided to him by the metropolitan government are exhausted; provided further, however, that if a disabled member is eligible to receive a monthly disability pension until his unreduced retirement age, the disability pension shall then cease, and thereafter he shall be eligible to receive a normal retirement pension in accordance with Chapters 3.33, 3.37 and 3.40; except that his service shall include his entire period of disability prior to the attainment of his unreduced retirement age as though his termination had never occurred, and the service retirement pension shall be computed as though his earnings from the date his disability pension commenced had remained the same until his service retirement date as his earnings prior to the date his disability pension commenced, notwithstanding any provisions of the system to the contrary.

C. When a disability pension is paid to a member for an in-line-of-duty injury, at the expense of the metropolitan government, and was caused under circumstances creating a legal liability against some person other than the metropolitan government to pay damages, the injured em-

ployee shall have the right to receive benefits as provided herein, and such injured employee and/or the metropolitan government may pursue his/her remedy by proper action in a court of competent jurisdiction against such person. In the event of recovery against such third person by judgment, settlement or otherwise, the metropolitan government shall have a subrogation right against such recovery for the cost of the disability pension. The metropolitan government shall only collect its subrogation interest when the employee has been made whole by settlement, judgment or otherwise. Such settlements shall be reported to and approved by the board. (Ord. 2002-1233 § 2, 2002; Ord. 97-1018 § 8, 1997; Ord. 95-1452 § 49(e), 1995)

3.29.060 Board authority—Disability report required—Resuming work—Termination of pension.

A. The board shall have exclusive authority to determine the disability and continuation of disability of a disabled member, and shall, in accordance with this section, determine the disability pension deduction of a disabled member. An applicant for a disability pension shall furnish to the board a disability report, as provided in this section, and such medical or other information as may reasonably be required by the board for the purpose of establishing disability. The board may secure additional medical or other evidence as it deems necessary and appropriate. On the basis of the disability report, medical, and other information as the board has assembled, the board shall thereupon determine whether or not the applicant is a disabled member, and if so shall determine the amount of his gross disability pension, disability pension deduction, and net disability pension.

B. At least once each calendar year thereafter, the board shall require any disabled member who is receiving a disability pension, and who has not reached his unreduced retirement age, to submit a disability report and written proof satisfactory to the board that he is still disabled. At least once per year, and no more frequently than monthly, the board may require a disabled member to file a disability report. The disability report shall show (1) whether or not Social Security benefits have been applied for, and if the application has been rejected, the report shall be accompanied by a copy of the letter from the Social Security Administration stating that he is not eligible for Social Security benefits, (2) the amount, if any, of primary Social Security benefits that he is receiving, and (3) the amount of his outside earnings while disabled. The board, at each regular meeting, shall redetermine the disability pension deduction and net disability pension of all disabled members for whom all reports have been requested and received, or from whom reports have been

voluntarily submitted, on the basis of the disability reports and any other information the board may reasonably require of the disabled member. For purposes of calculating the disability pension deduction of a disabled member, the member's earnings while disabled shall be redetermined by the board in a practical manner as the monthly average, for the period of time covered by his last report, of the member's reported earnings while disabled. The disability pension deduction shall be the amount, if any, by which his frozen earnings is exceeded by the sum of his gross disability pension and his earnings while disabled. Any redetermined amount of net disability pension shall not be payable until the calendar month following the month in which the board's redetermination is made.

C. 1. The board is authorized at any time to cause an investigation to be made of any pensioner being paid a disability pension because of medically determinable bodily injury, or disease, or mental disorder, or disability due to injury suffered in the course of his employment. In gathering information concerning and in determining the existence and/or continuation of disability, the board may utilize the services of an insurance company, physicians, or any other entity deemed by the board to be suitable for such purpose. If, in the judgment of the board, such pensioner is able to resume work in the classified service, the pension shall cease upon the pensioner's being assigned to work in the classified service at the same, or substantially the same, rate of pay being paid at the time the disability occurred; however, if the pensioner be a policeman or fire fighter, the pension shall cease upon the board's finding that the pensioner is able to resume active work in the same department in which such pensioner worked at the time the disability occurred, and only upon such pensioner's being assigned to work in such department at the same, or substantially the same, rate of pay being paid at the time such pensioner was disabled. In all cases, the duties of such assigned position shall not be substantially less in authority or responsibility and shall be such that the pensioner can perform based on his training, education and experience.

2. Any pensioner able to resume work with the metropolitan government at a rate of pay less than he was receiving at the time of disability shall have his rate of pay supplemented by the board by the amount that the pensioner's current pay falls below the pensioner's prior rate of pay. Pay supplement shall not take into consideration any overtime pay, shift differential or other pay supplements, but shall be based solely upon the employee's base salary. The amount of salary supplement shall continue until the pensioner's current rate of pay exceeds the pensioner's prior rate of pay except the salary supplement

shall not be diminished by any across-the-board pay increases given to Metro employees.

D. Once the board has determined that the pensioner is medically capable of returning to work, the department that the pensioner last worked in will be notified that the pensioner is medically capable of returning to work. If the department fails to return the pensioner to work, within sixty days of the date of notification to the department, the cost of all continuing disability payments will be allocated to the pensioner's former department on a quarterly basis. The board shall report to the mayor and the council budget and finance committee, on a quarterly basis, allocations made to the board, by any department.

E. The board shall assist departments in identifying, where possible, work assignments for disabled workers to return to, that otherwise complies with this chapter. If a disabled pensioner refuses to return to work after a third written offer of employment, the disability pension shall automatically terminate. A pensioner who accepts the work assigned in the classified service shall receive credit for service under the system, including the period of time during which he was receiving disability pension benefits; a pensioner who does not accept the work assigned in the classified service shall not receive credit for service during disability, even if subsequently reemployed by the metropolitan government, although such member subsequently reemployed shall receive credit for service under the system for all months in which he was an eligible employee.

F. A member whose disability pension has been terminated because he did not accept the work assigned in the classified service shall be entitled to apply for resumption of benefits, which right shall terminate upon the expiration of ten years after the member's last disability payment, or at unreduced retirement age, whichever occurs first; provided, that nothing in this paragraph shall be construed to limit the authority of the board to consider the total actual disability of a member who returns to employment with the metropolitan government after a period of disability and subsequently becomes disabled again while employed by the metropolitan government, notwithstanding such member's failure to reapply for benefits during the ten-year period.

G. A member whose disability pension has been terminated as provided for herein shall have the right to a hearing on any finding of fact, and may submit any evidence to the board as he deems necessary, and the board shall reconsider its determinations.

H. An employee returning to work in the classified service shall receive priority consideration in being assigned to the position he or she previously held based upon training, education and experience. Should this position not be available upon the employee's return to work, the

employee shall be placed in that previous position as soon as that position becomes vacant and available. (Ord. 95-1452 § 49(f), 1995)

3.29.070 Survivor benefits—Conditions for payment.

A. If a disabled member dies before reaching unreduced retirement age and while entitled to receive a disability pension, whether or not any pension payments have actually been made, a survivor benefit shall be payable thereafter under the following conditions:

1. To the deceased disabled member's widow until her death and thereafter to the natural guardian or guardians of such surviving dependent children, if any, of such deceased disabled member; otherwise, to the legal guardian or guardians of the surviving dependent children of the deceased disabled. Where a deceased member dies with more than one set of surviving dependent children, benefits which are payable to natural or legal guardians under this subdivision 1 for the benefit of such surviving dependent children, shall be distributed per capita among the children so that each such dependent child shall share equally in the benefits so long as he remains a dependent child;

2. To the legal guardian or guardians of the surviving dependent children of a deceased disabled member for the benefit of such surviving dependent children when the deceased disabled member dies with no spouse surviving him.

B. The benefits provided by this section to be paid for the benefit of the surviving dependent children of a deceased disabled member shall terminate when there ceases to be a surviving dependent child of a deceased disabled member.

C. The amount of the survivor benefit shall equal twenty-five percent of the member's average earnings preceding his disability, but not less than the benefit that would have commenced at the member's date of death had he retired instead of dying, based on his average earnings and service at the time of his termination, in accordance with Option A. (Ord. 95-1452 § 49(g), 1995)

3.29.080 Survivor benefits—When member died in line of duty.

If a member who is an eligible employee dies and his death is the result, directly or indirectly, of an act occurring, or thing done, or risk taken, which, as determined in the discretion of the board, was required of him in the performance of his duty as a metropolitan employee, a survivor benefit shall be payable in accordance with Section 3.29.070 as though he had died after starting to receive a disability pension benefit. (Ord. 95-1452 § 49(h), 1995)

3.29.090 Questionnaire requirements for recipients.

A. All persons on disability pension, under this Division, shall be required to fill out the questionnaire set out in this section. The questionnaire is to provide the employee benefit board information on persons receiving disability pensions. The questionnaire shall be submitted at least annually, in July of each year, commencing July, 1978, and such questionnaire shall be signed, and the following words shall be printed on the application above the signature: "Under penalties of perjury, I declare that I have examined this application and to the best of my knowledge and belief it is true, correct and complete."

B. If a person on disability pension fails or refuses to fill out the questionnaire, or fails or refuses to provide the medical authorization herein provided for, the person's disability pension shall be suspended until such information is provided.

C. The following information shall be included:

1. The nature of the disability;
2. Person's attending physician;
3. The date of the person's last physical examination;
4. Changes in the person's physical condition;
5. Whether or not the person is presently employed;
6. If the person is employed, whether his earned income (i.e., wage or salary — not rent, interest, dividends or capital gains) exceeds his disability income;
7. Whether or not the person is willing to return to employment with the metropolitan government if a position can be secured for his employment;
8. The person on disability pension shall be required to submit proper medical authorization for the purpose of enabling the benefit board to secure pertinent medical records and reports.

D. In addition to the above questions, the board shall be authorized to include other pertinent questions concerning the person's physical condition; provided, however, that this questionnaire shall not apply to any individual who is on a disability pension who has attained his unreduced retirement age. (Ord. 95-1452 § 49(I), 1995)

Chapter 3.30

PLAN QUALIFICATION

Sections:

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3.30.130	Applicable mortality table under Rev. Rul. 2001-62.

3.30.010 Introduction.

A. The pensions for members with credited employee service and pensions for members with credited fire and police service (the “plan”) is part of larger system of employee benefits plans provided by the Metropolitan Government of Nashville and Davidson County, Tennessee (metropolitan government) for the benefit of its employees. The benefits included in this system include the plan, as well as disability benefits, medical and life insurance programs. The terms of the plan are set forth in the Metropolitan Code of Laws subject to the provisions of the Metropolitan Charter.

B. Intention. It is the intention of the metropolitan government that the plan comply with all requirements of Internal Revenue Code Section 401(a) that apply to plans that are sponsored by state or local governments or political subdivisions. The metropolitan government intends that this plan be a tax-qualified plan.

C. Purpose of this Chapter. The provisions of this chapter have been adopted by the metropolitan government for the sole purpose of complying with Section 401(a) of the Internal Revenue Code. The provisions of this shall not be construed to change the benefits otherwise payable under the plan unless such is required under the Internal Revenue Code Section 401(a). (Ord. 2002-1060 § 1 (part), 2002)

3.30.020 Benefit limitations based on Code Section 415.

Unless otherwise noted, this section shall be effective for Plan Years beginning after January 1, 1987.

A. This section, except for subsection (A)(2), applies regardless of whether any member is or has ever been a member in another qualified plan maintained by the employer. If any member is or has ever been a member in another qualified plan or a welfare benefit fund, as defined in Section 419(e) of the Code, maintained by the employer, or an individual medical account, as defined in Section 415(l)(2) of the Code, which provides an annual addition, subsection B is also applicable to that member’s benefits.

1. The annual benefit otherwise payable to a member at any time shall not exceed the maximum permissible amount. If the benefit the member would otherwise accrue in a limitation year would produce an annual benefit in excess of the maximum permissible amount, then the rate of accrual will be reduced so that the annual benefit shall equal the maximum permissible amount.

2. The limitation in subsection 1 above is deemed satisfied if the annual benefit payable to a member is not more than one thousand dollars multiplied by the member’s number of years of service or parts thereof (not to exceed ten) with the employer, and the employer has not at any time maintained a qualified defined contribution plan, a welfare benefit plan as defined in Section 419(e) of the Code, or an individual medical account, as defined in Section 415(l)(2) of the Code, in which such member participated.

B. This subsection applies if any member is covered, or has ever been covered, by another plan maintained by the employer, including a qualified plan, a welfare benefit fund, as defined in Section 419(e) of the Code, or an individual medical account, as defined in Section 415(l)(2) of the Code, or a simplified employee pension which provides an annual addition maintained by the employer.

1. If a member is, or has ever been, covered under more than one qualified defined benefit plan maintained by the employer, the sum of the member’s annual benefits from all such plans may not exceed the maximum permissible amount.

2. The provisions of this subsection shall not apply to limitation years beginning after December 31, 1999. If the employer maintains, or at any time maintained, one or more qualified defined contribution plans covering any member in this plan, a welfare benefit fund as defined in Section 419(e) of the Code, an individual medical account as defined in Section 415(l)(2) of the Code, or a simplified employee pension, the sum of the member’s defined contribution fraction and defined benefit fraction shall not exceed one in any limitation year, and the annual benefit otherwise payable to the member under this plan or the

annual additions otherwise credited to the member under the defined contribution plan shall be limited to the level necessary to prevent the limitations of this section from being exceeded with respect to such member (but not to a figure less than the accrued benefit of such member at

the beginning of such limitation year). If the projected annual benefit is reduced to the level of the accrued benefit at the beginning of the limitation year, and the sum of both fractions remains in excess of one, the remaining reduction to a sum of one shall be accomplished by reducing the numerator of the defined contribution fraction.

3. The annual addition to any member's accounts for any plan year shall not exceed the lesser of thirty thousand dollars (or such amount for any plan year as results from the annual adjustment factor determined by the Commissioner of the Internal Revenue Service and effective on January 1 of the plan year), or twenty-five percent of such member's compensation for the plan year. If as a result of the allocation of forfeitures, a reasonable error in estimating the compensation of a member, a reasonable error in determining the amount of elective deferral contributions (within the meaning of Code Section 402(g)(3)) that may be made with respect to any individual under the limits of Code Section 415, or other facts and circumstances allowed by regulation, the annual additions limitation is exceeded in any plan year, the excess annual addition shall be charged against the member's accounts in the following order of priority by the amount required to insure compliance with this section.

a. The annual additions to any other qualified defined contribution plan.

b. Employee contributions to this plan. The portion of such excess which consists of employee contributions shall be returned to the member. The employee contributions returned or distributed shall include income on such amounts determined in the same manner as income is determined in this plan (however, if such method of determining income is not permitted by regulations, then income shall be determined in a manner consistent with any applicable regulations).

c. In the case of an individual who was a member in one or more qualified defined benefit plans of the employer as of the first day of the first limitation year beginning after December 31, 1986, the application of the limitations of this section shall not cause the maximum permissible amount for such individual under all such qualified defined benefit plans to be less than the individual's Tax Reform Act of 1986 (TRA '86) accrued benefit. The preceding sentence applies only if all such qualified defined benefit plans met the requirements of Section 415 of

the Code for all limitation years beginning before January 1, 1987.

C. Adjustment for delayed payment. If the annual benefit of a member commences after age sixty-five, the defined benefit dollar limitation shall be adjusted so that it is the actuarial equivalent of an annual benefit of such dollar limitation beginning at age sixty-five.

11. "Projected annual benefit" means the annual benefit to which the member would be entitled under the terms of the plan assuming:

a. The member shall continue employment until normal retirement age under the plan (or current age, if later); and

b. The member's compensation for the current limitation year and all other relevant factors used to determine benefits under the plan shall remain constant for all future limitation years.

12. "Year of participation" means each accrual computation period (computed to fractional parts of a year) for which the following conditions are met:

a. The member is credited with at least the period of service for benefit accrual purposes, required under the terms of the plan in order to accrue credited employee service or credited police and fire service; and

b. The member is included as a member under the eligibility provisions of the plan for at least one day of the period of credited employee service or credited police and fire service.

If these two conditions are met, the portion of a year of participation credited to the member shall equal the amount of credited employee service or credited police and fire service credited to the member for such accrual computation period. A member who is permanently and totally disabled within the meaning of Section 415(c)(3)(C)(i) of the Code for an accrual computation period shall receive a year of participation with respect to that period. In addition, for a member to receive a year of participation (or part thereof) for an accrual computation period, the plan must be established no later than the last day of such accrual computation period. In no event will more than one year of participation be credited for any twelve month period.

D. Definitions. For purposes of this section, the following terms shall be defined as follows:

1. "Annual additions" means the sum of the following amounts credited to a member's accounts under a qualified defined contribution plan for the limitation year:

- a. Employer contributions;
- b. Employee contributions; and
- c. Forfeitures.

Amounts allocated, after March 31, 1984, to an individual medical account, as defined in Section 415(l)(2) of

the Code, which is part of a pension or annuity plan maintained by the employer, shall be treated as an annual addition to a qualified defined contribution plan.

2. “Annual benefit” means a retirement benefit under the plan which is payable annually in the form of a straight life annuity. Except as provided below, a benefit payable in a form other than a straight life annuity shall be adjusted to an actuarially equivalent straight life annuity before applying the limitations of this section. The annual benefit shall not include any benefits attributable to employee contributions (other than contributions picked up by the employer in accordance with Code Section 414(h)) or roll-over contributions, or the assets transferred from a qualified plan that was not maintained by the employer. No actuarial adjustment to the benefit is required for (i) the value of a qualified joint and survivor annuity (as defined in Code Section 417(b)), (ii) the value of benefits that are not directly related to retirement benefits (such as the qualified disability benefit, pre-retirement death benefits and post-retirement medical benefits), and (iii) the value of post-retirement cost-of-living increases, if any, made in accordance with Section 415(d) of the Code and Section 1.415-3(c)(2)(iii) of the Treasury Regulations.

3. “Compensation” means, solely for purposes of this section, wages, salaries, and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the employer maintaining the plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, reimbursements, and expense allowances), and excluding the following:

a. Employer contributions to a plan of deferred compensation (including a Code Section 457 plan) which are not includible in the employee’s gross income for the taxable year in which contributed, or any distributions from a plan of deferred compensation; and

b. Other amounts which received special tax benefits, including pick-up contributions, and contributions made by the employer (whether or not under a salary reduction agreement) towards the purchase of an annuity described in Code Section 403(b) (whether or not the amounts are actually excludable from the gross income of the eligible employee). Notwithstanding the above, effective January 1, 1998, compensation shall include salary deferrals under Sections 401(k), 403(b), 457 and 125 of the Code, however contributions picked up by the employer shall continue to be excluded.

For limitation years beginning on and after January 1, 2001, for purposes of applying the limitations of this section, compensation paid or made available during such limitation years shall include elective amounts that are not includible in the gross income of the eligible employee by reason of Code Section 132(f)(4).

4. “Defined benefit dollar limitation” means ninety thousand dollars. Effective on January 1, 1988, and each January thereafter, the ninety thousand dollar limitation above will be automatically adjusted by multiplying such limit by the cost of living adjustment factor prescribed by the Secretary of the Treasury under Section 415(d) of the Code in such manner as the Secretary shall prescribe. The new limitation will apply to limitation years ending within the calendar year of the date of the adjustment.

5. “Defined benefit fraction” means a fraction, the numerator of which is the sum of the member’s projected annual benefits under all qualified defined benefit plans (whether or not terminated) maintained by the employer, and the denominator of which is the lesser of (i) one hundred twenty-five percent of the dollar limitation determined for the limitation year under Sections 415(b)(1)(A) and (d) of the Code and (ii) one hundred forty percent of the highest average compensation, including any adjustments under Section 415(b)(5) of the Code, both in accordance with Section 3.30.020(E).

Notwithstanding the above, if the member was a member as of the first day of the first limitation year beginning after December 31, 1986 in one or more qualified defined benefit plans maintained by the employer which were in existence on May 6, 1986, the denominator of this fraction shall not be less than one hundred twenty-five percent of the sum of the annual benefits under such plans which the member had accrued as of the close of the last limitation year beginning before January 1, 1987, disregarding any changes in the terms and conditions of the plans after May 5, 1986. The preceding sentence applies only if the qualified defined benefit plans individually and in the aggregate satisfied the requirements of Code Section 415 for all limitation years beginning before January 1, 1987.

6. “Defined contribution fraction” means a fraction, the numerator of which is the sum of the annual additions to the member’s account under all qualified defined contribution plans (whether or not terminated) maintained by the employer for the current and all prior limitation years, (including the annual additions attributable to the member’s nondeductible employee contributions to this and all other qualified defined benefit plans, whether or not terminated, maintained by the employer and the annual additions attributable to all welfare benefit funds, as defined in Section 419(e) of the Code or individual medical accounts, as defined in Section 415(l)(2) of the Code, maintained by

the employer), and the denominator of which is the sum of the maximum aggregate amounts for the current and all prior limitation years of service with the employer (regardless of whether a qualified defined contribution plan was maintained by the employer). For purposes hereof, the maximum aggregate amount in any limitation year is the lesser of (i) one hundred twenty-five percent of the dollar limitation determined under Section 415(c)(1)(A) of the Code after adjustment under Section 415(d) of the Code and (ii) thirty-five percent of the member's compensation for such year.

If the eligible employee was a member as of the first day of the first limitation year beginning after December 31, 1986, in one or more defined contribution plans maintained by the employer which were in existence on May 6, 1986, then the numerator of this fraction shall be adjusted if the sum of this fraction and the defined benefit fraction would otherwise exceed one under the terms of this plan. Under the adjustment, an amount equal to the product of (i) the excess of the sum of the fractions over one times (ii) the denominator of this fraction, shall be permanently subtracted from the numerator of this fraction. The adjustment shall be calculated using the fractions as they would be computed as of the end of the last limitation year beginning before January 1, 1987, and disregarding any changes in the terms and conditions of the plans made after May 5, 1986, but using the Code Section 415 limitation applicable to the first limitation year beginning on or after January 1, 1987. The annual addition for any limitation year beginning before January 1, 1987 shall not be recomputed to treat all employee contributions as annual additions.

7. "Employer" means, for purposes of this section, the Metropolitan Government of Nashville and Davidson County, Tennessee and any agency that adopts this plan.

8. "Highest average compensation" means the average compensation for the three consecutive years of service with the employer that produces the highest average.

9. "Limitation year" means the plan year.

10. "Maximum permissible amount" means the defined benefit dollar limitation as modified below.

a. If the member has less than ten years of participation with the employer, the maximum permissible amount is reduced by one-tenth for each year of participation (or part thereof) less than ten. To the extent provided in regulations or in other guidance issued by the Internal Revenue Service, the preceding sentence shall be applied separately with respect to each change in the benefit structure of the plan. The adjustments of this paragraph shall be applied in the denominator of the defined benefit fraction based upon years of service. In no event shall the reduction in the maximum permissible amount reduce the limitation to an

amount less than one-tenth of that limitation (determined without regard to this paragraph).

b. Adjustment for early payment. If the annual benefit of the member commences before age sixty-two, the defined benefit dollar limitation shall be determined as follows:

i. If the annual benefit of a member commences prior to age sixty-two, the defined benefit dollar limitation shall be the actuarial equivalent of an annual benefit beginning at age sixty-two, as determined above, reduced for each month by which benefits commence before the month in which the member attains age sixty-two. However, in no event shall the adjustment in this paragraph result in the defined benefit dollar limitation being reduced to an amount less than minimum specified below. If the annual benefit of a member commences on or after age fifty-five, the minimum amount shall be seventy-five thousand dollars (with no adjustments for increases in the cost of living). If the annual benefit of a member commences before age fifty-five, the minimum amount shall be the actuarial equivalent of an annual benefit of seventy-five thousand dollars commencing at age fifty-five (with no adjustments for increases in the cost of living).

ii. The adjustment in paragraph (i) above shall not apply in the case of a qualified member. A member is considered qualified for purposes of this paragraph if the service used in computing his benefit includes at least fifteen years of full-time employment: in any police department or fire department of the employer, to provide police protection, firefighting services or emergency medical services within the jurisdiction of the employer; or as a participant of the Armed Forces of the United States; or in any combination thereof adding up to at least fifteen years of full-time employment.

iii. The adjustment in paragraph (i) above shall not apply to any benefit payable as a result of the member becoming disabled or to any benefit payable to the beneficiaries, survivors or estate of a member as a result of the death of the member.

E. Actuarial equivalence. All actuarial equivalence determinations in this section shall be made in accordance with this subsection. Actuarial equivalence determinations include: adjustment for early payment; adjustment for delayed payment; adjustment for payment in a form other than a life annuity; computation of the benefit attributable to employee contributions; and all other determinations of a similar nature, as required by context. In computing actuarial equivalence, the mortality table used shall be the mortality table specified by the Secretary of the Treasury for determinations under Section 417(e)(3) of the Code, which shall be the table specified in Revenue Ruling 95-6 unless a subsequent ruling or promulgation requires oth-

erwise. The interest rate used shall be the rate specified in Section 3.30.040 per year for purposes of adjustments for early payment and five percent for late payment. For purposes of adjustments due to form of payment, the interest rate used shall be the rate specified in Section 3.30.040 per year. Solely for purposes of determining the benefit attributable to employee contributions, to compute the limitations in this section, interest shall be credited to such contributions at the following rates. For periods before July 1, 1988, interest shall be credited to employee contributions at the rate of five percent per year. For plan years commencing on or after July 1, 1988, interest shall be credited on accumulated employee contributions at the rate specified in Section 411(c)(2)(C)(iii) of the Code, up to the determination date. The interest rate used for periods of time commencing on the determination date shall be the rate specified in Section 417(e)(3) of the Code as of the last day of the prior plan year (as if such Code section applied to this plan). For all other determinations not specifically mentioned herein, the interest rate shall be the rate specified in Section 3.30.040 per year.

Effective for plan limitation years beginning after December 31, 1994, notwithstanding any other calculations made under this subsection a Member's equivalent annual benefit shall always be the greater of an equivalent annual benefit computed using:

1. The interest rate and mortality tables provided for under Section 3.30.040 of the plan; or
2. The applicable interest rate and mortality table provided for under Code Section 417(e)(3)(A)(ii).

F. Provided, the application of this section shall be subject to such rules as may be prescribed by the Secretary of the Treasury, in order to maintain the qualified status of the plan. (Ord. BL2004-128 § 1, 2004; Ord. 2002-1060 § 1 (part), 2002)

3.30.030 Limitation on earnings.

A. For purposes of computing any benefit under the plan or any contribution made to the plan, there shall be a limit on the amount of compensation that may be considered in any plan year for any member. The limit shall be the amount specified in this section as described below. The limit contained in this Section 3.30.030 shall apply to earnings as defined in Section 3.08.010 and to compensation as defined in Section 3.30.020.

B. For plan years beginning after December 31, 1995, the annual compensation limit of Code Section 401(a)(17) is incorporated by reference in this plan with respect to noneligible members; provided, however, in the case of an eligible member, the annual compensation limit of Code Section 401(a)(17) shall not apply to the extent that the application of the limitation would reduce the amount of

compensation that was allowed to be taken into account under the plan as in effect on July 1, 1993. For these purposes, an eligible member is an individual who first became a member in the plan prior to the first day of the first plan year beginning after the earlier of (i) the last day of the plan year by which a plan amendment to reflect the amendments made by Section 13212 of the Omnibus Budget Reconciliation Act of 1993 is both adopted and effective, or (ii) December 31, 1995. (Ord. 2002-1060 § 1 (part), 2002)

3.30.040 Actuarial equivalence.

A. All actuarial equivalence determinations in this plan shall be made in accordance with this section. Actuarial equivalence determinations include: adjustment for early payment; adjustment for delayed payment; adjustment for payment in a form other than a life annuity and all other determinations of a similar nature, as required by context. Actuarial equivalence shall mean, for purposes of determining optional benefit payment forms, a benefit of equivalent value based on the following:

1. For participants with benefit commencement dates on and after January 1, 1996:

- a. Interest eight percent per annum;
- b. Mortality: Participants - a table constructed from the 1983 Group Annuity Mortality Table by assuming a population composition consisting of sixty-six and two-thirds percent male participants and thirty-three and one-third percent female participants;
- c. Beneficiaries - a table constructed from the 1983 Group Annuity Mortality Table by assuming a population composition consisting of thirty-three and one-third percent male participants and sixty-six and two-thirds percent female participants.

2. For participants with benefit commencement dates before January 1, 1996:

- a. Interest—seven and one half percent per annum;
- b. Mortality for general government participants:
 - i. Participants - the 1951 Group Annuity Mortality Table for males projected to 1960.
 - ii. Beneficiaries - the 1951 Group Annuity Mortality Table for females projected to 1960.
- c. Mortality for police and fire participants:
 - i. Participants - the mortality factors adopted by the employee benefit board for this purpose.
 - ii. Beneficiaries - the 1951 Group Annuity Mortality Table for females projected to 1960.
- d. Mortality for early retirement:
 - i. General government participants - the mortality factors adopted by the employee benefit board for this purpose.

ii. Police and fire participants - the mortality factors adopted by the employee benefit board for this purpose. (Ord. 2002-1060 § 1 (part), 2002)

3.30.050 Minimum distributions.

Effective July 1, 1989, notwithstanding any provisions of the plan to the contrary, the following provisions shall apply:

1. A member shall begin to receive his plan benefits no later than April 1 of the calendar year following the later of (i) the year in which he attains age seventy and one-half; or (ii) the year in which he retires. However, in no case shall the member's benefit commence later than the date required by Section 401(a)(9) of the Code, and in no case shall the distribution violate the minimum distribution incidental death benefit requirements of the regulations under Section 401(a)(9) of the Code.

2. Upon the death of a member after distribution of his benefit has commenced, the remaining portion of his interest in the plan will be distributed at least as rapidly as under the method of distribution in effect prior to the member's death.

3. Upon the death of a member before distribution of his benefit has commenced, the member's entire interest will be distributed no later than five years after the member's death, except for situations described below:

a. If any portion of the member's interest is payable to a designated beneficiary, the distributions may be made in substantially equal installments over a period of time that is equal to or less than the life or life expectancy of the designated beneficiary commencing no later than one year after the member's death.

b. If the designated beneficiary is the member's surviving spouse, the date distributions are required to commence in accordance with subsection (a) above and shall not be earlier than the date on which the member would have attained age seventy and one-half, and if the spouse dies before payments begin, subsequent distributions shall be made as if the spouse had been the member. (Ord. 2002-1060 § 1 (part), 2002)

3.30.060 Right to direct rollover.

A. This section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the employee benefit board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

B. Definitions.

1. "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income.

2. "Eligible retirement plan" means an individual retirement account described in Section 408(a) of the code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, or a qualified trust described in Section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

3. "Distributee" means a member or former member, or the spouse of the member or former member, provided such person is entitled to receive a benefit under the plan.

4. "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee. (Ord. 2002-1060 § 1 (part), 2002)

3.30.070 Qualified military service.

The following sentence shall apply as to affected members who are reemployed on or after December 12, 1994. Notwithstanding any provision of this plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u). (Ord. 2002-1060 § 1 (part), 2002)

3.30.080 Family Medical Leave Act requirements.

Notwithstanding any other provisions of the plan, in the case of an eligible employee who takes family or medical leave as an eligible employee of a covered employer under the provisions of the Family and Medical Leave Act of 1993 (FMLA), any period of FMLA leave shall be treated as continued service for purposes of eligibility to participate and vesting service to the extent required by applicable law. (Ord. 2002-1060 § 1 (part), 2002)

3.30.090 Vesting upon plan termination.

In the event that this plan is terminated for any reason the accrued benefits of all members shall fully vest and become nonforfeitable. (Ord. 2002-1060 § 1 (part), 2002)

3.30.100 Plan forfeitures.

Any plan forfeitures occurring as a result of a member terminating employment with the Metropolitan Government of Nashville and Davidson County, Tennessee prior to completing five years of service shall not be used to increase benefits of remaining plan members. (Ord. 2002-1060 § 1 (part), 2002)

3.30.110 Definitions.

A. "Code" means the U.S. Internal Revenue Code as amended. All references to code sections shall include any applicable rulings and regulations, and as of any future date shall automatically incorporate any amendments to such sections, and shall be deemed to refer to any comparable provisions of any future laws.

B. "Plan" means the pensions for members with credited employee service and pensions for members with credited fire and police service as specified in the Metropolitan Code.

C. "Plan year" means each twelve month period commencing July 1 and ending on the next June 30.

D. "Spouse" means the person who is legally married to a member.

E. "Vesting service" means the service of a member as defined in Section 3.08.010 of the plan. (Ord. 2002-1060 § 1 (part), 2002)

3.30.120 EGTRRA requirements.

A. Limitations of Benefits.

1. **Effective Date.** This subsection shall be effective for limitation years ending after December 31, 2001.

2. **Effect on Members.** Benefit increases resulting from the increase in the limitations of Section 415(b) of the Code shall be provided to all employees participating in the plan who have one hour of service on or after the first day of the first limitation year ending after December 31, 2001.

3. **Defined Benefit Dollar Limitation.** The "defined benefit dollar limitation" is one hundred sixty thousand dollars, as adjusted, effective January 1 of each year, under Section 415(d) of the Code in such manner as the Secretary of the Treasury shall prescribe, and payable in the form of a straight life annuity. A limitation as adjusted under Section 415(d) will apply to limitation years ending with or within the calendar year for which the adjustment applies.

4. **Maximum Permissible Benefit.** Except the "maximum permissible benefit" is the defined benefit dollar limitation adjusted where required, as provided in subsection (a) and, if applicable, in subsection (b) or (c) below.

a. If the member has fewer than ten years of participation in the plan, the defined benefit dollar limitation shall be multiplied by a fraction: (i) the numerator of which is the number of years (or part thereof) of participation in the plan; and (ii) the denominator of which is ten.

b. If the benefit of a member begins prior to age sixty-two, the defined benefit dollar limitation applicable to the member at such earlier age is an annual benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the defined benefit dollar limitation applicable to the Participant at age sixty-two (adjusted under a. above, if required). The defined benefit dollar limitation applicable at an age prior to age sixty-two is determined as the lesser of: (i) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using the interest rate specified in Section 3.30.040 and the mortality table (or other tabular factor) specified in Section 3.30.020; and (ii) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using a five percent interest rate and the mortality table specified in Section 3.30.020. Any decrease in the defined benefit dollar limitation determined in accordance with this paragraph shall not reflect a mortality decrement if benefits are not forfeited upon the death of the member. If any benefits are forfeited upon death, the full mortality decrement is taken into account. Notwithstanding the foregoing, the adjustment described in this paragraph shall not apply to certain police and firefighters as provided in Code Section 415(b)(2)(G).

c. If the benefit of a member begins after the member attains age sixty-five, the defined benefit dollar limitation applicable to the member at the later age is the annual benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the defined benefit dollar limitation applicable to the member at age sixty-five (adjusted under a. above, if required). The actuarial equivalent of the defined benefit dollar limitation applicable at an age after age sixty-five is determined as: (i) the lesser of the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using the interest rate specified in Section 3.30.040 and the mortality table (or other tabular factor) specified in Section 3.30.020; and (ii) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using a five percent interest rate assumption and the mortality table specified in Section 3.30.020. For these purposes, mortality between age sixty-five and the age at which benefits commence shall be ignored.

B. Increase in Compensation Limit.

1. **Increase in Limit.** The annual compensation of each noneligible member taken into account in determining benefit accruals in any plan year beginning after December 31, 2001, shall not exceed \$200,000. Annual compensation means compensation during the plan year or such other consecutive twelve-month period over which compensation is otherwise determined under the plan (the determination period). For purposes of determining benefit accruals in a plan year beginning after December 31, 2001, the annual compensation limit for noneligible members under this section for determination periods beginning before January 1, 2002, shall be two hundred thousand dollars. Notwithstanding the foregoing, in the case of an eligible member, the annual compensation limit of Code Section 401(a)(17) shall not apply to the extent that the application of the limitation would reduce the amount of compensation that was allowed to be taken into account under the plan as in effect on July 1, 1993. For these purposes, an eligible member is an individual who first became a member in the plan prior to the first day of the first plan year beginning after the earlier of: (i) the last day of the plan year by which a plan amendment to reflect the amendments made by section 13212 of the Omnibus Budget Reconciliation Act of 1993 is both adopted and effective; or (ii) December 31, 1995.

2. **Cost-of-Living Adjustment.** The two hundred thousand dollar limit on annual compensation in subsection (1) above shall be adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

C. Direct Rollovers of Plan Distributions.

1. **Effective Date.** This section shall apply to distributions made after December 31, 2001.

2. **Modification of Definition of Eligible Retirement Plan.** For purposes of the direct rollover provisions in Section 3.30.060, an eligible retirement plan shall also mean an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in Section 414(p) of the Code.

3. **Modification of Definition of Eligible Rollover Distribution to Include After-Tax Employee Contributions.**

For purposes of the direct rollover provisions in Section 3.30.060, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible. (Ord. BL2003-35 § 1, 2003)

3.30.130 Applicable mortality table under Rev. Rul. 2001-62.

A. **Effective Date.** This section shall apply to distributions with annuity starting dates on or after December 31, 2002.

B. Notwithstanding any other plan provisions to the contrary, the applicable mortality table used for purposes of adjusting any benefit under Section 415(b)(2)(B), (C), or (D) of the Internal Revenue Code as set forth in Section 3.30.120 or limitation under Section 415(b)(2)(B), (C), or (D) of the Internal Revenue Code as set forth in Section 3.30.120 is the table prescribed in Rev. Rul. 2001-62.

C. For any distribution with an annuity starting date on or after the effective date of this section and before the adoption date of this section, if application of the amendment as of the annuity starting date would have caused a reduction in the amount of any distribution, such reduction is not reflected in any payment made before the adoption date of this section. However, the amount of any such reduction that is required under Code Section 415(b)(2)(B) must be reflected actuarially over any remaining payments to the member. (Ord. BL2003-35 § 2, 2003)

Chapter 3.32

**PENSIONS FOR MEMBERS WITH CREDITED
EMPLOYEE SERVICE—DIVISION A**

Sections:

3.32.010Eligibility for pension.

3.32.020Normal retirement pension.

3.32.030Early retirement pension.

3.32.040Vested pension after five years of credited employee service.

The provisions of this chapter shall apply only to those members who are covered under Division A of the system. (Added during 10-95 supplement)

3.32.010 Eligibility for pension.

A member of Division A who is not specifically excluded by the Metropolitan Charter from having a pension from the system and who has credited employee service shall be eligible following termination to receive an employee service pension in accordance with the provisions of this chapter, provided he makes written application for such pension in accordance with Section 3.08.160. No pension provided in accordance with this chapter shall be payable with respect to any month that a disability pension is payable. (Ord. 95-1452 § 50, 1995; prior code § 32-1-49)

3.32.020 Normal retirement pension.

A. The employee service pension of a retired member shall commence on the latter of the first day of the month following his attainment of age sixty-five or following his termination and be payable on the first day of the month thereafter during his lifetime, computed as of his date of termination as one-twelfth of the product of 1 and 2, as follows:

1. Credited employee service;
2. One percent of average base earnings, plus one and seventy-five one-hundredths percent of average excess earnings.

B. A member who is an eligible employee and who is accruing credited employee service may at his option continue his employment beyond the normal date of retirement. (Prior code § 32-1-50)

3.32.030 Early retirement pension.

A. An employee service pension of a retired member shall be payable if his termination occurs prior to his sixty-fifth birthday, but after his fifty-fifth birthday, provided he has then completed twenty years of service. Such pension shall be payable as either 1 or 2, as follows:

1. A monthly deferred early employee service pension, which shall commence on the first day of the month following his attainment of age sixty-five, provided he is then living, computed and payable in accordance with provisions of Section 3.32.020;
2. An immediate monthly early employee service pension which shall be payable on the first day of the month following his date of termination and on the first day of each month thereafter during his lifetime, the amount of which shall be determined to be the actuarial equivalent of the amount of pension provided in subdivision 1 of this subsection.

B. If a retired member who has elected a monthly deferred employee service pension, as provided in subsection (A)(1) of this section, is reemployed subsequently as a metropolitan employee, his service shall not be deemed to have been interrupted, but shall not include any time during which he was not an eligible employee.

C. Any disability pensioner granted a disability pension under Section 3.28.050(C), that otherwise meets the criteria of this section, may voluntarily elect to take an early retirement pension. This subsection, as added by Ordinance 97-1018, shall have a retroactive application date of January 1, 1997. (Ord. 97-1018 §§ 7, 10 (part), 1997; prior code § 32-1-51)

3.32.040 Vested pension after five years of credited employee service.

Any member who is a metropolitan employee on or after October 1, 2001 and whose termination occurs after he has completed at least five years of service and before he is eligible to receive a benefit under either Section 3.32.020 or 3.32.030 shall be eligible to leave any employee contributions in the system and shall be eligible to receive a monthly deferred pension which shall commence on the first day of the month following his attainment of age sixty-five, provided he is then living, computed and payable in accordance with the provisions in Section 3.32.020.

Any member who was not a metropolitan employee on or after October 1, 2001 and whose termination occurs after he has completed at least ten years of service and before he is eligible to receive a benefit under either Section 3.32.020 or 3.32.030 shall be eligible to leave any employee contributions in the system and shall be eligible to receive a monthly deferred pension which shall commence on the first day of the month following his attainment of age sixty-five, provided he is then living, computed and payable in accordance with the provisions in Section 3.32.020. (Ord. 2001-775 § 1, 2001; Prior code § 32-1-52)

Chapter 3.33

**PENSIONS FOR MEMBERS WITH CREDITED
EMPLOYEE SERVICE—DIVISION B**

Sections:

3.33.010 Eligibility for pension.

3.33.020 Normal retirement pension.

3.33.030 Early retirement pension.

3.33.040 Vested pension after five years of credited employee service.

3.33.050 Unused sick leave at service retirement.

The provisions of this chapter shall apply only to those members who are covered under Division B of the system. (Ord. 95-1452 § 51 (part), 1995)

3.33.010 Eligibility for pension.

A member of Division B who is not specifically excluded by the Metropolitan Charter from having a pension from the system, and who has credited employee service, shall be eligible following termination to receive an employee service pension in accordance with the provisions of this chapter, provided he makes written application for such pension in accordance with Section 3.08.160. No pension provided in accordance with this chapter shall be payable with respect to any month that a disability pension is payable. (Ord. 95-1452 § 51(a), 1995)

3.33.020 Normal retirement pension.

A. The employee service pension of a retired member shall commence on the later of the first day of the month following his unreduced retirement age, or following his termination, and be payable on the first day of the month thereafter during his lifetime, computed as of his date of termination as one-twelfth of the product of 1 and 2, as follows:

1. Credited employee service;
2. One and seventy-five one-hundredths percent of average earnings.

B. A member who is an eligible employee and who is accruing credited employee service may at his option continue his employment beyond the normal date of retirement. (Ord. 95-1452 § 51(b), 1995)

3.33.030 Early retirement pension.

A. An employee service pension of a retired member shall be payable if his termination occurs prior to his eligibility under 3.33.020 but after his fiftieth birthday and after his completion of ten years of credited employee service. Such pension shall be payable as either 1 or 2, as follows:

1. A monthly deferred early employee service pension, which shall commence on the first day of the month following his attainment of unreduced retirement age, provided he is then living, computed and payable in accordance with provisions of Section 3.33.020;
2. An immediate monthly early employee service pension which shall be payable on the first day of the month following his date of termination and on the first day of each month thereafter during his lifetime, the

amount of which shall be determined as under Section 3.33.010, but reduced by four percent for each of the first five years by which retirement date precedes unreduced retirement age, and by eight percent for each additional year by which retirement date precedes unreduced retirement age; provided, however, that the immediate monthly benefit shall not be less than the actuarial equivalent of the amount of deferred pension provided in subdivision 1 of this section. (Ord. 95-1452 § 51(c), 1995)

3.33.040 Vested pension after five years of credited employee service.

Any member who is a metropolitan employee on or after October 1, 2001 and whose termination occurs after he has completed at least five years of service and before he is eligible to receive a benefit under either Section 3.33.020 or 3.33.030 shall be eligible to leave any employee contributions in the system and shall be eligible to receive a monthly deferred pension which shall commence on the first day of the month following his attainment of unreduced retirement age, provided he is then living, computed and payable in accordance with the provisions in Section 3.33.020.

Any member who was not a metropolitan employee on or after October 1, 2001 and whose termination occurs after he has completed at least ten years of service and before he is eligible to receive a benefit under either Section 3.33.020 or 3.33.030 shall be eligible to leave any employee contributions in the system and shall be eligible to receive a monthly deferred pension which shall commence on the first day of the month following his attainment of unreduced retirement age, provided he is then living, computed and payable in accordance with the provisions in Section 3.33.020. (Ord. 2001-775 § 2, 2001: Ord. 95-1452 § 51(d), 1995)

3.33.050 Unused sick leave at service retirement.

Any member with unused sick leave time, at service retirement, shall receive one hundred percent credit, subject to an affirmative election at the time of retirement, and in accordance with the board's policies and procedures, as follows:

1. Pension eligibility credit; or
2. Service credit. (Ord. 95-1452 § 51(e), 1995)

Chapter 3.36

PENSIONS FOR MEMBERS WITH FIRE AND POLICE CREDITED SERVICE—DIVISION A

Sections:

3.36.010 Eligibility for pension.

3.36.020 Normal retirement pension.

3.36.030 Early retirement pension.

3.36.040 Vested pension after five years of credited employee service.

The provisions of this chapter shall apply only to those members who are covered under Division A of the system. (Ord. 95-1452 § 52, 1995)

3.36.010 Eligibility for pension.

A member who is not specifically excluded by the Metropolitan Charter from having a pension from the system and who has credited fire and police service shall be eligible following termination to receive a pension in accordance with this chapter, provided he makes written application for such pension in accordance with Section 3.08.160. No pension provided in accordance with this chapter shall be payable with respect to any month that a disability pension is payable. (Ord. 92-159 § 21, 1992; prior code § 32-1-53)

3.36.020 Normal retirement pension.

A. The compulsory retirement age of a fireman or a policeman who is a member shall be age sixty; except, that those in the system who have reached age sixty on or before January 1, 1972, shall be subject to compulsory retirement on December 31, 1972. At a member's election, he may retire prior to such compulsory retirement age at any time after age fifty-five; provided, that he has twenty years of credited fire and police service.

B. The police and fire pension of a retired member shall commence on the latter of the first day of the month following his attainment of age fifty-five and following his termination and be payable on the first day of the month thereafter during his lifetime computed as one-twelfth of the sum of 1 and 2, as follows:

1. Two percent of average earnings for each year of credited fire and police service not in excess of twenty-five years; plus

2. One and seventy-five one-hundredths percent of average earnings for each year that his credited police and fire service exceeds twenty-five years; provided, however, that the amount of pension payable in each month after the retired member has reached age sixty-five and after he has commenced receiving social security benefits, whichever occurs first, shall be reduced by the computed amount of his monthly primary social security; provided further, that the amount of pension payable in any month shall not be less than one-twelfth of the product of a and b, as follows:

a. Credited police and fire service;

b. One percent of average base earnings, plus one and seventy-five one-hundredths percent of average excess earnings.

C. The computed amount of such primary social security shall be determined by the board in accordance with the method by which the primary insurance amount is determined in accordance with the social security law as such law existed on the date of termination; except, that the primary insurance amount shall be based on the amount of his average earnings on the date of termination; provided further, however, that if the retired member proves to the satisfaction of the board that the actual amount of his monthly primary social security, not reduced by reason of any earnings, is less than such computed amount, the board shall thereupon adjust upward his pension provided under this section or option elected, as the case may be, according to the actual rather than the computed amount of his primary social security. (Ord. 88-514 § 2, 1988; prior code § 32-1-54)

3.36.030 Early retirement pension.

A. A police and fire pension of a retired member shall be payable if his termination occurs after age fifty-five, or prior to his fifty-fifth birthday, but after he has reached his fiftieth birthday, provided he has then completed twenty years of service. Such pension shall be payable as either 1 or 2, as follows:

1. A monthly deferred early police and fire pension, which shall commence on the first day of the month following his attainment of age sixty-two, provided he is then living, computed and payable in accordance with the provisions of Section 3.36.020;

2. An immediate monthly early retirement benefit, which shall be payable on the first day of the month following his date of termination and on the first day of each month thereafter during his lifetime, the amount of which shall be determined to be the actuarial equivalent of the amount of pension provided in subdivision 1 of this subsection.

B. If a member who has elected a monthly deferred police and fire pension, as provided in subsection (A)(1) of this section, is reemployed subsequently as a metropolitan employee, his service shall not be deemed to have been interrupted, but shall not include any time during which he was not an eligible employee.

C. Any disability pensioner granted a disability pension under Section 3.29.050(B), that otherwise meets the criteria of this section, may voluntarily elect to take an early retirement pension. (Ord. 97-1018 § 9, 1997; prior code § 32-1-55)

3.36.040 Vested pension after five years of credited employee service.

Any member who is a metropolitan employee on or after October 1, 2001 and whose termination occurs after he has completed at least five years of service and before he is eligible to receive a benefit under either Section 3.36.020 or 3.36.030 shall be eligible to leave any employee contributions in the system and shall be eligible to receive a monthly deferred pension which shall commence on the first day of the month following his attainment of age sixty-two, provided he is then living, computed and payable in accordance with the provisions in Section 3.36.020.

Any member who was not a metropolitan employee on or after October 1, 2001 and whose termination occurs after he has completed at least ten years of service and before he is eligible to receive a benefit under either Section 3.36.020 or 3.36.030 shall be eligible to leave any employee contributions in the system and shall be eligible to receive a monthly deferred pension which shall commence on the first day of the month following his attainment of age sixty-two, provided he is then living, computed and payable in accordance with the provisions in Section 3.36.020. (Ord. 2001-775 § 3, 2001: Prior code § 32-1-56)

Chapter 3.37

PENSIONS FOR MEMBERS WITH FIRE AND POLICE CREDITED SERVICE—DIVISION B

Sections:

3.37.010 Eligibility for pension.

3.37.020 Normal retirement pension.

3.37.030 Early retirement pension.

3.37.040 Vested pension after five years of credited employee service.

3.37.050 Unused sick leave at service retirement.

The provisions of this chapter shall apply only to those members who are covered under Division B of the system. (Ord. 95-1452 § 53 (part), 1995)

3.37.010 Eligibility for pension.

A member of Division B, who is not specifically excluded by the Metropolitan Charter from having a pension from the system and who has credited fire and police service shall be eligible following termination to receive a pension in accordance with this chapter, provided he makes written application for such pension in accordance with Section 3.08.160. No pension provided in accordance with this chapter shall be payable with respect to any

month that a disability pension is payable. (Ord. 95-1452 § 53(a), 1995)

3.37.020 Normal retirement pension.

A. The compulsory retirement age of a fire fighter or a policeman who is a member shall be age sixty. At a member's election, he may retire prior to such compulsory retirement age at any time after he has attained his unreduced retirement age.

B. The police and fire pension of a retired member shall commence on the later of the first day of the month following his attainment of unreduced retirement age and following his termination and be payable on the first day of the month thereafter during his lifetime computed as one-twelfth of the sum of 1 and 2 as follows:

1. Two percent of average earnings for each year of credited fire and police service not in excess of twenty-five years; plus

2. One and seventy-five one-hundredths percent of average earnings for each year that his credited police or fire service exceeds twenty-five years. (Ord. 95-1452 § 53(b), 1995)

3.37.030 Early retirement pension.

A. A police and fire pension of a retired member shall be payable if his termination occurs after forty-five and after completing ten years of credited police and fire service. Such pension shall be payable as either 1 or 2, as follows:

1. A monthly deferred early police and fire pension, which shall commence on the first day of the month following his attainment of his unreduced retirement age, provided he is then living, computed and payable in accordance with the provisions of Section 3.37.020;

2. An immediate monthly early retirement benefit, which shall be payable on the first day of the month following his date of termination and on the first day of each month thereafter during his lifetime, the amount of which shall be as provided in subsection (A)(1) of this section, reduced by four percent for each of the first five years by which retirement precedes unreduced retirement age, and by eight percent for each additional year by which retirement precedes unreduced retirement age; provided, however, that the immediate monthly benefit shall not be less than the actuarial equivalent of the amount of deferred pension provided in subdivision 1 of this section. (Ord. 95-1452 § 53(c), 1995)

3.37.040 Vested pension after five years of credited employee service.

Any member who is a metropolitan employee on or after October 1, 2001 and whose termination occurs after

he has completed at least five years of service and before he is eligible to receive a benefit under either Section 3.37.020 or 3.37.030 shall be eligible to leave any employee contributions in the system and shall be eligible to receive a monthly deferred pension which shall commence on the first day of the month following his attainment of unreduced retirement age, provided he is then living, computed and payable in accordance with the provisions in Section 3.37.020.

Any member who was not a metropolitan employee on or after October 1, 2001 and whose termination occurs after he has completed at least ten years of service and before he is eligible to receive a benefit under either Section 3.37.020 or 3.37.030 shall be eligible to leave any employee contributions in the system and shall be eligible to receive a monthly deferred pension which shall commence on the first day of the month following his attainment of unreduced retirement age, provided he is then living, computed and payable in accordance with the provisions in Section 3.37.020. (Ord. 2001-775 § 4, 2001: Ord. 95-1452 § 53(d), 1995)

3.37.050 Unused sick leave at service retirement.

Any member with unused sick leave time, at service retirement, shall receive one hundred percent credit, subject to an affirmative election at the time of retirement, and in accordance with the board's policies and procedures, as follows:

1. Pension eligibility credit; or
2. Service credit. (Ord. 95-1452 § 53(e), 1995)

Chapter 3.40

MINIMUM BENEFITS, OPTIONS, AND DEATH BEFORE RETIREMENT

Sections:

- 3.40.010 Pension contributions—Refund—Revocation of withdrawal—Repayment after reemployment.**
- 3.40.020 Optional benefits—Conditions for payment.**
- 3.40.030 Optional benefits—Defined.**
- 3.40.035 Deferred Retirement Option Plan for members of Division A and B ("DROP").**
- 3.40.040 Death before retirement benefits commence—Division A.**
- 3.40.041 Death before retirement benefits commence—Division B.**

3.40.045 Death before retirement benefits commence—Dependent child benefit.

3.40.050 Minimum service pension benefit.

3.40.010 Pension contributions—Refund—Revocation of withdrawal—Repayment after reemployment.

A. If upon a member's termination no benefit is payable under any section of Chapter 3.32, 3.33, 3.36 or 3.37, or, if a benefit is payable under any section of Chapter 3.32, 3.33, 3.36 or 3.37, but payments have not commenced, a refund of a member's contributions may be elected by the member or beneficiary, as the case may be, in lieu of all benefits which may otherwise become payable, such refund to be reduced by the amount of any benefits which have been previously applied for and paid from the fund. The amount of any such refund if the date of such termination is prior to the member's attainment of age sixty, shall exclude his prior employee contributions to a former plan which shall be forfeited, but the amount of any refund if the date of such termination is after his attainment of age sixty shall include his prior employee contributions to a former plan in addition to his pension contributions credited to his individual account. Notwithstanding any provisions of the system to the contrary, in no case shall any refund be payable if any benefit payment or any optional benefit under the system has commenced to be paid.

B. Any officer and/or employee who, between January 1, 1972, and December 5, 1972, elected to withdraw his pension contributions may revoke such election; provided, however, that such revocation must be in writing and delivered to the board within one month after the passage of Bill No. 73-588. The revocation must be accompanied by payment of the amount withdrawn as well as those amounts which would have been paid by the officer and/or employee had he remained in the pension plan, plus interest at the rate of six percent per annum on the total amount payable, to be computed from the date of payment of the contributions to the officer and/or employee.

C. If a member's service with Metro, or a predecessor government, terminates and the member is subsequently rehired, the member shall receive service credit for his prior period of service after being regularly employed continuously for one year. This subsection shall apply to all members who are metropolitan employees on or after October 1, 2001, regardless of the date of termination or rehire. Members who are not metropolitan employees on or after October 1, 2001 shall only receive prior service credit if application for such credit was properly made under prior ordinances.

A member who received a refund of his contributions upon his termination, and who otherwise meets the requirements of this section, shall repay such contributions to the system with interest at six percent per annum of such refund computed from the day of payment of such refund to the member. Upon repayment of refund and interest the member shall receive credit for service as provided in Section 3.08.010 for service prior to his termination, but not including the time he was not employed by the metropolitan government. If only a portion of the refunded amount is repaid by the member, the member shall only receive pro rata credit, for his prior service with the refunded amount, plus interest, being credited towards the oldest period of service.

Any provision to the contrary notwithstanding, any employee whose service was terminated and was subsequently rehired prior to September 1, 1996 shall be permitted to make application to the board and receive service credit for their prior period of service, provided such application is made to the board not later than December 31, 2001. (Ord. 2001-775 § 6; Ord. BL2000-561 § 1, 2000; Ord. 95-1452 §§ 54, 55, 1995; amended during 10/94 supplement; prior code § 32-1-57)

3.40.020 Optional benefits—Conditions for payment.

A. A member who is entitled to receive a pension in accordance with either Chapter 3.32, 3.33, 3.36 or 3.37 may elect at any time prior to approval of the application by the board to have an optional benefit payable as set forth in Section 3.40.030 in lieu of all benefits he may otherwise be entitled to receive. If a member applies for a service pension without electing an optional benefit, the board office shall notify the spouse of the member that an option is available, the amount of the option, and request an acknowledgment from the spouse that an option is available but not being elected. Those persons that are on disability pensions as provided under Chapter 3.28 or 3.29 must make their election prior to the time that their service pension becomes effective. The optional benefit shall be paid in accordance with the terms of the optional benefit elected. A member may revoke his election of an optional benefit and may make a new election at any time prior to the approval of the application by the board; provided, that if he or his beneficiary dies prior to the commencement of benefits, his election of an optional benefit shall be null and void.

B. Election of any optional benefit shall be subject to the approval of the board and shall be made by the member in writing and in such manner and form as the board may prescribe. The beneficiary last designated by the member prior to the date he delivers written application for

an optional benefit to the board shall be the beneficiary to receive any benefits payable after his death; provided, that the beneficiary to receive any optional benefit in accordance with either Option A or Option B described in Section 3.40.030 must be a living person and cannot be his estate. (Ord. 95-1452 §§ 56, 57, 1995; Ord. 92-159 §§ 23, 24, 1992; prior code § 32-1-58)

3.40.030 Optional benefits—Defined.

A. The amount of any optional benefit set forth in this section shall be based on option rates adopted from time to time by the retirement board, and shall be actuarially equivalent in value to the benefits that would otherwise be payable to a retired member if no option were to have been elected; provided, that an optional benefit in lieu of any pension which commences after an employee's sixty-fifth birthday shall not be less than is based on the option rate that would have been applicable had he retired at age sixty-five.

B. The optional benefits are as follows:

1. Option A — Joint and Survivor Option. An amount of optional benefit payable to the retired member for life, which shall continue after his death to his surviving beneficiary for life in the same amount as that payable to the retired member.

2. Option B — Modified Joint and Survivor Option. An amount of optional benefit payable to the retired member for life, which shall continue after his death to his surviving beneficiary for life in the amount of fifty percent of the amount that was payable to the retired member.

3. Option C — Social Security Option. An increased amount of optional benefit, payable to the retired member during his lifetime until an age between age sixty-two and age sixty-five, and a reduced optional benefit payable thereafter for life in order to have a more level retirement income when such reduced optional benefit is added to his primary social security. This optional benefit shall be based on a computed amount of primary social security, determined by the board in accordance with the Act as it exists on the date his optional benefit is to commence.

4. Option D — One Hundred Twenty Payments Certain and Life Option. An optional benefit payable for life with the first one hundred twenty payments guaranteed. Any guaranteed payments due after the death of the retired member shall be payable to his beneficiary.

5. Option E — A Joint and Survivor Option with a Pop-Up Feature. An amount of optional benefit payable to the retired member for life, which shall continue after the retired member's death to his surviving beneficiary for life in the same amount payable to the retired member; provided, however, that if the surviving beneficiary for life predeceases the retired member, the amount of the benefit

paid to the retired member shall be adjusted to the retired member's normal retirement benefit.

6. Option F — Modified Joint and Survivor Option with a Pop-Up Feature. An amount of optional benefit payable to the retired member for life, which shall continue after his death to his surviving beneficiary for life in the amount of fifty percent of the amount that was payable to the retired member; provided, however, that if the surviving beneficiary for life predeceases the retired member, the amount of the benefit paid to the retired member shall be adjusted to the retired member's normal retirement benefit.

C. Under any option elected which provides for payments after the death of a retired member to a beneficiary, except under Options A and B if the retired member's spouse is the beneficiary, the actuarial present value of payments to the retired member must be more than fifty percent of the actuarial present value of payments to the retired member and the beneficiary. (Ord. 92-159 § 25, 1992; prior code § 32-1-59)

3.40.035 Deferred Retirement Option Plan for members of Division A and B ("DROP").

A. Eligible members shall be entitled to elect a deferred retirement option plan ("DROP") as an additional optional benefit. Members electing a DROP benefit shall be entitled to receive a lump sum payment equal to the monthly benefit amount the member would be eligible to receive at retirement (calculated prior to any actuarial reductions for other retirement options elected) multiplied by the number of months in the DROP period elected. Members may elect a one, two or three year DROP period. A member electing a DROP benefit shall then have his monthly periodic pension benefit determined by reducing the pension benefit that would otherwise be payable by an annuity that is the actuarial equivalent of the DROP lump sum elected. The monthly periodic pension payments (after actuarial equivalent reduction) shall be payable as pension benefits are otherwise payable under the system, including optional benefit elections pursuant to Sections 3.40.020 and 3.40.030 of this chapter.

B. Only a member of Division A or B that is eligible for normal retirement under Sections 3.32.020, 3.33.020, 3.36.020 and 3.37.020 and has accumulated twenty-five or more years of combined credited employee service and/or credited fire and police service shall be eligible to participate in the DROP. Early retirees and employees who terminate with a vested benefit prior to eligibility to immediately receive a normal retirement benefit shall not be eligible to make a DROP election. DROP elections shall be made for whole year periods only and may not be made for

a period that exceeds three years. The election shall be made at the time of retirement and prior to commencement of benefits.

C. A DROP election shall not be available to a member whose termination of service occurs because of disability.

D. A DROP election shall not be available to the beneficiary of a member who has separated from service as a result of death.

E. A DROP election shall not be available to any former employee who has commenced receiving benefits from the plan prior to the effective date of the ordinance codified in this section.

F. The DROP payment elected shall be paid as soon as practicable after the retirement of the member. Election of a DROP payment shall be subject to the approval of the board and shall be made by the member in writing and in such manner and form as the board may prescribe.

G. Actuarial equivalence for the purpose of determining a member's annuity reduction resulting from a DROP election shall be based upon the age of the member, the DROP lump sum payment amount elected, and the actuarial assumptions that are in use for this purpose by the plan at the time of the DROP election. The actuarial assumptions to be used on the effective date of this section shall be based on recommendations of the first plan experience study conducted after June 30, 1997 without regard to actual adoption by the board.

Actuarial assumptions used in the preceding section for the purpose of determining actuarial equivalence between lump sum payments and related annuity reductions may be changed periodically to ensure currency. Assumptions include mortality tables; interest rates and future cost of living increase rates. The actuarial assumptions will be based on recommendations from the most recent actuarial experience study conducted for the plan without regard to actual adoption by the board. Revised assumptions used in periods subsequent to the implementation of the initial assumptions used on the effective date will be effective as of the first July 1 date following the later of (1) the ending date of the period examined in the most recent experience study, or (2) the date the most recent experience study is formally presented to the board.

Actuarial assumptions may differ for Divisions A and B due to differences in future expectations.

Provided however that the interest rate used for the purpose of determining actuarial equivalence between lump sum payments and related annuity reductions will be no less than interest rate specified by Internal Revenue Code Section 417(e)(3)(A)(ii)(II) for the measurement date that is four months prior to the first day of the plan year in which the benefit commencement date occurs.

H. Payments made to a member as a result of a DROP election shall be treated as a refund of member contributions for purposes of determining benefits payable to a beneficiary as a result of the death of the member.

I. Any other provisions of this title notwithstanding, no member shall acquire a vested right to a DROP benefit until such member's application for a DROP benefit is approved by the board. DROP benefits may be discontinued or modified as to any member until such member's application is approved by the board.

J. A member may not elect a DROP payment period that results in a lump sum payment that exceeds the actuarially equivalent value of the member's retirement benefit.

K. No member shall be permitted to apply for or receive a DROP benefit until and unless the employee benefit board adopts a resolution certifying that the necessary infrastructure and resources are in place to adequately administer the DROP benefit. (Ord. 2002-1234 § 1 (part), 2002)

3.40.040 Death before retirement benefits commence—Division A.

The provisions of this section shall apply only to those members who are covered under Division A of the system.

If the death of a member occurs while he is an eligible employee and after becoming eligible to retire and receive a benefit in accordance with Sections 3.32.020 through 3.32.040 or 3.36.020 through 3.36.040, or if the death of a member occurs after his termination but before any benefit under either Sections 3.32.020 through 3.32.040 or 3.36.020 through 3.36.040 has commenced to be paid, his surviving spouse shall be eligible to receive a benefit determined in accordance with the applicable option the member had elected prior to his termination, but if no option had been so elected, the benefit shall be determined in accordance with Option A as though the member had retired in the month prior to the month of his death and had elected Option A. (Ord. 95-1452 § 58, 1995; prior code § 32-1-60)

3.40.041 Death before retirement benefits commence—Division B.

The provisions of this section shall apply only to those members who are covered under Division B of the system.

If the death of a member occurs while he is an eligible employee and after becoming eligible to retire and receive a benefit in accordance with Sections 3.33.020 through 3.33.040 or 3.37.020 through 3.37.040, or if the death of a member occurs after his termination but before any benefit under either Sections 3.33.020 through 3.33.040 or 3.37.020 through 3.37.040 has commenced to be paid, his

surviving spouse shall be eligible to receive a benefit determined in accordance with the applicable option the member had elected prior to his termination, but if no option had been so elected, the benefit shall be determined in accordance with Option A as though the member had retired in the month prior to the month of his death and had elected Option A.

In no case, however, will an eligible employee's death benefit be less than twenty-five percent of his average earnings over the last twelve months preceding his death or Option A — whichever is greater. (Ord. 95-1452 § 59, 1995)

3.40.045 Death before retirement benefits commence—Dependent child benefit.

If a member who is vested in the pension system dies leaving no surviving spouse and no benefit is payable under any other provision of this code and the member is survived by one or more dependent children, a benefit under this section shall be payable for the benefit of the member's dependent child or children. Any benefit due under this section shall be distributed per capita among the surviving dependent children so that each shall share equally in the benefits so long as he remains a dependent child.

The amount of the benefit due under this section shall be the amount a surviving spouse the same age as the member would have received, determined in accordance with Option A, as though the member had retired in the month prior to the month of his death or twenty-five percent of the member's average earnings over the last twelve months preceding his death - whichever is greater. (Ord. 2001-775 § 7, 2001)

3.40.050 Minimum service pension benefit.

A. The minimum service pension benefit amount shall be applicable to those persons receiving a benefit, as set out below, as of January 1, 1993, or entitled to receive a benefit on or after January 1, 1993, but in either event only to those persons who have completed at least ten years of credited service.

B. The minimum service pension benefit shall apply only to calculations made under Sections 3.32.020, 3.32.030, 3.33.020, 3.33.030, 3.36.020, 3.36.030, 3.37.020 or 3.37.030. If the amount of a benefit provided under any section other than Section 3.32.020, 3.33.020, 3.36.020 or 3.37.020 is arrived at by first calculating a normal retirement benefit under Section 3.32.020, 3.33.020, 3.36.020 or 3.37.020, the calculation under Section 3.32.020, 3.33.020, 3.36.020 or 3.37.020 shall take the minimum service pension benefit into account, but the amount of the benefit payable under such other section shall not otherwise be affected by the existence of the minimum service pension

benefit. If the amount of a benefit is calculated without reference to the amount of the normal retirement benefit payable under Section 3.32.020, 3.33.020, 3.36.020 or 3.37.020, then the amount of such benefit shall not be affected by the existence of the minimum service pension benefit.

C. The minimum service pension benefit shall be based upon years of credited employee service under the system and shall be as set out below:

1. For those persons with less than ten years of service there is no minimum service pension benefit.

2. For those persons with ten years of service but less than eleven years of credited employee service, the minimum service pension benefit shall be one hundred fifty dollars.

3. For those persons with eleven years of service but less than twelve years of credited employee service, the minimum service pension benefit shall be one hundred sixty-five dollars.

4. For those persons with twelve years of service but less than thirteen years of credited employee service, the minimum service pension benefit shall be one hundred eighty dollars.

5. For those persons with thirteen years of service but less than fourteen years of credited employee service, the minimum service pension benefit shall be one hundred ninety-five dollars.

6. For those persons with fourteen years of service but less than fifteen years of credited employee service, the minimum service pension benefit shall be two hundred ten dollars.

7. For those persons with fifteen years of service but less than sixteen years of credited employee service, the

minimum service pension benefit shall be two hundred twenty-five dollars.

8. For those persons with sixteen years of service but less than seventeen years of credited employee service, the minimum service pension benefit shall be two hundred forty dollars.

9. For those persons with seventeen years of service but less than eighteen years of credited employee service, the minimum service pension benefit shall be two hundred fifty-five dollars.

10. For those persons with eighteen years of service but less than nineteen years of credited employee service, the minimum service pension benefit shall be two hundred seventy dollars.

11. For those persons with nineteen years of service but less than twenty years of credited employee service, the minimum service pension benefit shall be two hundred eighty-five dollars.

12. For those persons with twenty years or more of service of credited employee service, the minimum service pension benefit shall be three hundred dollars.

D. Any person entitled to a benefit under Sections 3.32.020, 3.32.030, 3.33.020, 3.33.030, 3.36.020, 3.36.030, 3.37.020, or 3.37.030 of this system, who is otherwise covered by this minimum service pension benefit provision, whose current benefit has been increased by the provision of Section 3.08.170 or 3.08.171 shall not be entitled to any increase in their pension benefit if the application of Sections 3.08.170 or 3.08.171 has raised their benefit in excess of the applicable amount set out in subsection C of this section, adjusted (if the benefit is other than a normal retirement benefit) as described in the second sentence of subsection B of this section. If the amount currently received is less than the applicable minimum benefit as set out in subsection C of this section (so adjusted), the current benefit shall be increased only by the difference in the current benefit amount and the benefit provided for in subsection C (so adjusted). After January 1, 1993, all increases under Sections 3.08.170 or 3.08.171 shall be based upon the applicable minimum service pension benefit amount provided for herein. (Ord. 95-1452 §§ 60, 61, 1995; Ord. 94-965 §§ 1 and 2, 1994; §§ 1 and 2 of Amdt. 2 to Ord. 93-624, 4/20/93; Amdt. to Ord. 93-624, 4/20/93; Ord. 93-624 § 1, 1993)

Chapter 3.44

LIFE INSURANCE AND MEDICAL CARE FOR NONMEMBERS

Sections:

3.44.010 Nonmember defined.

3.44.020 Extending benefits to nonmembers.

**3.44.030 Enrollment of nonmembers—When
required.**

3.44.040 Payment of premiums.

3.44.050 Refund of premiums.

**3.44.060 Continuous coverage required—
Nonmember restrictions.**

**3.44.070 Employment benefit rights for CETA
employees.**

3.44.010 Nonmember defined.

A “nonmember,” for the purposes of this chapter, shall include:

A. An elected official of the metropolitan government who is not a metropolitan employee, as defined in Section 3.08.010;

B. Each person who was an eligible employee on the effective date, who was covered prior to that date for medical care benefits under a group type of contract which was terminated through action other than his own, and who elects not to become a member of the system;

C. Each person, on the effective date, who was retired and who was receiving a benefit from a former plan and who had been covered for medical benefits immediately prior to that date under a group type of contract which was terminated through action other than his own. (Prior code § 32-1-61)

3.44.020 Extending benefits to nonmembers.

The contracts which provide medical care benefits and life insurance benefits for members in accordance with Chapter 3.24 and Sections 3.28.010 through 3.28.080 shall make such benefits available, subject to this chapter, to a nonmember, for himself and his dependents. (Prior code § 32-1-62)

3.44.030 Enrollment of nonmembers—When required.

A nonmember shall have until seventy-five days following the effective date to enroll for medical care or life insurance benefits or both in accordance with this chapter, in which case his medical care coverage shall commence on the effective date and his life insurance shall commence

on the date he enrolls. A nonmember who does not so enroll for such medical care or life insurance benefits or both on or before seventy-five days following the effective date shall not be eligible thereafter to enroll for benefits pursuant to this chapter; except, that an elected official who is not a metropolitan employee shall be eligible to be covered, from the date he takes office, for benefits provided in this chapter, provided he enrolls within thirty days of the date he takes office; otherwise, he shall not be eligible to enroll for benefits pursuant to this chapter. (Prior code § 32-1-63)

3.44.040 Payment of premiums.

A. A nonmember shall pay for his coverage at the full premium rates of the life insurance contract or medical care contract or both, as the case may be, payable by payroll deductions from the date that coverage commences; provided, that if some of a nonmember’s medical care or life insurance premiums had been shared by either the former county or city governments, the extent of sharing shall be continued.

B. Notwithstanding the provisions of subsection A of this section, as of March 1, 1966, and thereafter during his employment by the metropolitan government, each nonmember, as defined by subsection B of Section 3.44.010, who has enrolled for medical care and/or life insurance benefits in accordance with this chapter shall be entitled to the same rights to contribute to the payment for medical care and life insurance benefits as members have, and shall be entitled to have the metropolitan government contribute to the payment for his medical care or life insurance benefits or both to the same extent that the metropolitan government contributes to the medical care and life insurance benefits of members. (Prior code § 32-1-64)

3.44.050 Refund of premiums.

In the event any nonmember may subsequently elect to become a member in accordance with Chapter 3.12, he will be eligible for a refund of one-half of all full premiums paid during the time he was covered for medical care benefits and life insurance benefits as a nonmember. (Prior code § 32-1-65)

3.44.060 Continuous coverage required— Nonmember restrictions.

A. The contracts shall provide that no gap in coverage shall exist in respect of any metropolitan employee, member or nonmember, or retired person referred to in this chapter or of any of his dependents previously covered by any type of group insurance program referred to in this chapter and who enrolls for coverage in accordance with this chapter.

B. No person who enrolls for coverage pursuant to this chapter shall be or be deemed to be member of the system. (Prior code § 32-1-66)

3.44.070 Employment benefit rights for CETA employees.

A. 1. Eligible employees of the Comprehensive Employment Training Act (CETA) program shall be eligible to participate in the life insurance and medical care benefits on the same basis as nonmembers, as provided in Sections 3.44.010 through 3.44.060; provided, that any contributions to these coverages that are to be paid by the metropolitan government are paid by federal funds from the CETA program. Eligible employees under the CETA program shall pay the same contribution rate as if they were employees of the metropolitan government.

2. Should the CETA program be revised or phased out, the metropolitan government shall have no obligation to continue the program or to make contributions to the pension and/or life and health insurance plans for CETA employees.

B. Employees of the CETA program shall not become a part of the pension system of the metropolitan government while they are employees under the CETA program.

C. CETA employees shall, when they would have otherwise been able to participate in the metropolitan government pension system, be permitted to authorize the deduction from their salaries of an amount of money equal to the employee contribution rate they would otherwise have paid. This money shall be held in a separate reserve account. If the CETA employee is transferred to a budgeted position from the CETA program within ninety days after the termination of the period of CETA participation, the contributions of the employee shall be transferred to the appropriate pension trust fund.

D. If a CETA employee is transferred to a budgeted position within ninety days after the termination of the period of CETA participation, in addition to the employee's contribution as provided in subsection C of this section, there shall be paid into the appropriate trust fund an amount equal to the contribution rate that would have otherwise been paid by the metropolitan government as the employer's contribution rate. The amount shall be paid from the federal funds allocated to the CETA program.

E. Upon being transferred to a budgeted position and the payment of the contribution, as set out in subsections C and D of this section, the employee shall be credited with service, for pension purposes, as if covered under the plan as a metropolitan government employee.

F. If a CETA employee is terminated or resigns, and not transferred to a budgeted position within ninety days after the termination of the period of CETA participation,

upon the termination the employee shall be refunded all amounts withheld under subsection C of this section.

G. This section shall not vest any rights to a CETA employee, in the pension plan, while still a CETA employee. Only upon transferring to a budgeted position shall a CETA employee be eligible for service or disability pension rights, and then only to the extent as other metropolitan government employees.

H. Those CETA employees who are enrolled in public service employment in work experience programs as of June 30, 1979, and who are enrolled in the metropolitan government pension system as of that date, shall be permitted to remain in the metropolitan government pension system, and CETA funds may be used for contributions on their behalf for the duration of their CETA participation. (Prior code § 32-1-66.1)

Chapter 3.48

SOCIAL SECURITY

Sections:

3.48.010 Policy and purpose—Statutory authority.

3.48.020 Execution of agreements—Employees and officials—Authority.

3.48.030 Execution of agreements—Board of education employees—Authority.

3.48.040 Payroll withholdings—Generally.

3.48.050 Payroll withholdings—Transfer from prior systems.

3.48.060 Payroll withholdings—Payment to state and federal agencies.

3.48.070 Records and reports.

3.48.080 Persons exempted from benefits.

3.48.010 Policy and purpose—Statutory authority.

It is declared to be the policy and purpose of the metropolitan government to extend, as of April 1, 1963, to the employees and officials thereof not excluded by law or this chapter, the benefits of the system of Federal Old Age and Survivors' Insurance, as provided by the Federal Social Security Act and amendments thereto, and authorized by Chapter 38, Title 8, Tennessee Code Annotated. In pursuance of such policy and for that purpose, the metropolitan government shall take such action as may be required by applicable federal or state laws or regulations. (Prior code § 32-1-67)

3.48.020 Execution of agreements—Employees and officials—Authority.

The mayor is authorized and directed to execute all necessary agreements and amendments thereto with the director of Old Age and Survivors' Insurance Agency, state of Tennessee, as agent or agency, to secure coverage of employees and officials as provided in this chapter. (Prior code § 32-1-68)

3.48.030 Execution of agreements—Board of education employees—Authority.

The chairman of the metropolitan board of education is authorized and directed to execute amendments to the social security agreement mentioned in Section 3.48.020, to provide coverage in such federal system for employees rendering services in positions covered either by the metropolitan board of education teacher retirement plan or by the metropolitan board of education supplemental teacher retirement plan, as of a date or dates authorized by such board in a formal request filed with the Old Age and Survivors' Insurance Agency, state of Tennessee. (Prior code § 32-1-74)

3.48.040 Payroll withholdings—Generally.

Withholding from salaries or wages of employees and officials, for the purpose provided in Section 3.48.010, is authorized to be made in the amounts and at such times as may be required by applicable federal or state laws or regulations, and shall be paid over to the state or federal agency designated by such laws or regulations. (Prior code § 32-1-69)

3.48.050 Payroll withholdings—Transfer from prior systems.

Acting under Section 20.03 of the Metropolitan Charter, withholdings from salaries or wages of employees and officials who were, prior to April 1, 1963, employees or officials of Davidson County, the city of Nashville and the city of Nashville parking board (contracting agencies), who were covered by the benefits of the system of Federal Old Age and Survivors' Insurance under agreements between the aforementioned contracting agencies and the state to meet any obligations under such agreement that may materialize or be disclosed on and after April 1, 1963, with respect to such employees and officials, are authorized, and such shall be withholdings paid over to the state or federal agency designated by applicable laws or regulations. (Prior code § 32-1-70)

3.48.060 Payroll withholdings—Payment to state and federal agencies.

A. There shall be appropriated from available funds such amounts at such times as may be required by applicable state or federal laws or regulations for employer's contributions, which shall be paid over to the state or federal agency designated by such laws or regulations.

B. There shall be appropriated from available funds such amounts at such times as may be required by applicable federal or state laws or regulations to pay the employer's share of contributions in connection with withholdings as provided in Section 3.08.150. Further, this appropriation shall include funds from which the social security contributions due and as incurred with respect to services of individuals under the agreements with the contracting agencies named in Section 3.48.050 which were not paid by such agencies, and which shall be paid over to the state or federal agency designated by applicable laws or regulations. (Prior code § 32-1-71)

3.48.070 Records and reports.

The metropolitan government shall keep records and make such reports as may be required by applicable state or federal laws or regulations. (Prior code § 32-1-72)

3.48.080 Persons exempted from benefits.

A. Except members of the Class A division of the Davidson County pension system, there is excluded from this chapter any authority to make any agreement with respect to employees or officials who are members of and rendering services in positions covered by any retirement system created for or by the former city of Nashville or Davidson County, or any employee or official rendering services in positions covered by the Nashville firemen and policemen retirement system who are not eligible for membership therein, or any employee or official rendering services in positions covered by a retirement system created for or by any entity of the former city of Nashville or Davidson County, or any federal or state retirement system, or any employee or official not authorized to be covered under applicable federal or state laws or regulations, any elective or appointed official or employee of the electric power board of the metropolitan government, or, with respect to the absolute coverage group authorized in subsection B of this section, any employee or official rendering services in part-time positions, elective officials engaged in rendering legislative services and any employee or official rendering services in positions the compensation for which is on a fee basis.

B. It is the legislative intent of this chapter, except as excluded in subsection A of this section, to authorize the extension of the benefits of the system of Federal Old Age

and Survivors' Insurance, effective April 1, 1963, to include, as an absolute coverage group (1) all employees and officials rendering services in positions not covered by a retirement system and all employees and officials rendering services in positions covered by any retirement system created for or by Davidson County and the former city of Nashville, but in which such employees and officials are not eligible for membership, and as retirement system group, (2) effective April 1, 1963, employees rendering services in positions and members of or eligible for membership in the Class A division of the Davidson County pension system, (3) effective January 1, 1965, employees and officials in positions covered by the metropolitan employee benefit system. Election officials and election workers earning less than one thousand dollars in a calendar year for such services are also excluded from this chapter for wages paid during a calendar year between January 1, 1995, and December 31, 1999, and thereafter for each calendar year in which the remuneration paid for such services is less than the adjusted amount to be determined under Section 218(c)(8)(B) of the Social Security Act for any calendar year commencing on or after January 1, 2000.

C. The term "part-time position," as used in this section, means and is defined as a position in which the normal time requirements for the position on a full-time basis are not met, and in which services performed by an employee do not normally exceed two hundred hours per calendar year. (Ord. 95-1448 § 1, 1995; prior code § 32-1-73)

Chapter 3.52

EMPLOYEE CLASSIFICATION AND COMPENSATION*

Sections:

3.52.010 Pay plan worksheets—Submitted when— Information requirements.

* **Editor's Note:** Ordinances and resolutions establishing and amending classification and pay plans for employees of the metropolitan government and boards, commissions and agencies thereof are not set out in this code. They are on file in the office of the metropolitan clerk and in the personnel department.

3.52.010 Pay plan worksheets—Submitted when—Information requirements.

A. The worksheets of each pay plan of the metropolitan government shall be submitted to the metropolitan council for its study and consideration at least fifteen days prior to the time that the pay plan shall be acted upon and such worksheets shall show for each and every class title

and for each and every base rate and for each and every increment under the monthly salary plus growth factor for such class title a parenthetical zero or whole number (i.e., "(0)" or "(15)"), showing the total number of metropolitan employees receiving that base rate or monthly salary plus growth factor increment for such class title. The arithmetical sum of these parenthetical figures shall be the total number of metropolitan employees on the payroll of this government and shall be so shown on a summary sheet by departments.

B. The worksheets and information provided for in subsection A of this section shall be revised as of the first day of each quarter of the fiscal year and shall be made available in printed form to any member of the council on request with five days' notice.

C. With the submission of any pay plan to the council for its consideration, the existing pay plan shall reflect the information required under subsections A and B of this section as of the date of its adoption and as of the first day of the last quarter preceding the proposed adoption of a subsequent pay plan. (Prior code § 32-1-75)

Chapter 3.56

LABOR POLICY

Sections:

3.56.010 Right of employees to organize— Collective bargaining.

3.56.020 Exclusive representatives—Determining status.

3.56.030 Exclusive representatives—Powers and duties—Term of recognition.

3.56.040 Government directed to meet with employees—Response to bargaining petition.

3.56.050 Agreements requiring funding to be submitted to council.

3.56.060 Payroll deductions for dues.

3.56.070 Right to strike not granted by chapter.

3.56.080 Employees relations board— Established—Membership— Duties.

3.56.090 Employees relations board—Mediation issues—Submittal and procedure.

3.56.010 Right of employees to organize— Collective bargaining.

Employees of metropolitan government shall have, and be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization, or to refrain from belonging, and

to bargain collectively through representatives of their own choosing on questions of wages, hours, retirement benefits and all other terms and conditions of employment for the purpose of representation free from actual interference, restraint or coercion. (Prior code § 32-1-76)

**3.56.020 Exclusive representatives—
Determining status.**

The director of personnel shall be responsible for determining exclusive representation status and shall establish an appropriate method to effect such recognition. He shall act upon any written petition for recognition as the exclusive representative within fifteen days after receiving such written petition. (Prior code § 32-1-77)

**3.56.030 Exclusive representatives—Powers
and duties—Term of recognition.**

When an employee organization has been designated by the director of personnel as the exclusive representative of the employees in an appropriate unit, it shall have the right to act for, negotiate a written memorandum of understanding, and bargain collectively for all employees in the unit, and such right shall remain in full force and effect for one calendar year from the effective date hereof; provided, however, that recognition as the exclusive representative may be extended for any agreed upon period beyond the termination date up to a maximum of three years as approved by the appropriate board or the civil service commission and the metropolitan mayor. (Prior code § 32-1-78)

**3.56.040 Government directed to meet with
employees—Response to bargaining
petition.**

All boards, commissions and branches of the metropolitan government, are directed to engage in meaningful meetings with their employees or their exclusive representative, on matters within their jurisdiction, and such boards, commissions and branches of government shall answer, in writing, any written bargaining petition within thirty days after receiving such bargaining petition. (Prior code § 32-1-79)

**3.56.050 Agreements requiring funding to be
submitted to council.**

Any portion of the memorandum of understanding agreed upon that requires funding in order to implement the agreement shall be submitted to the metropolitan council by the metropolitan mayor for its consideration. (Prior code § 32-1-80)

3.56.060 Payroll deductions for dues.

Upon the written authorization of any employee within a bargaining unit, on forms provided by the exclusive representative, the metro payroll department shall deduct from the payroll of the employee the monthly amount of dues as certified by the exclusive representative, and shall deliver the same to the designated official of the exclusive representative organization. Such authorization may be revoked or modified on the first of January and July of each year. (Prior code § 32-1-81)

**3.56.070 Right to strike not granted by
chapter.**

Nothing contained in this chapter shall constitute a grant of the right to strike to any employee of the metropolitan government. (Prior code § 32-1-82)

**3.56.080 Employees relations board—
Established—Membership—Duties.**

A. There is established a metropolitan employees relations board consisting of three members whose duties and jurisdiction shall be to engage in mediation and fact-finding on all disputes and unresolved issues that require approval of the metropolitan council, or as provided for in this chapter.

B. Composition of the board and selection of board members shall be in the following manner:

1. One member shall be selected by the exclusive representative;
2. One member shall be selected by the metropolitan mayor; and
3. One member shall be selected by the metropolitan vice-mayor. (Prior code 32-1-83)

**3.56.090 Employees relations board—
Mediation issues—Submittal and
procedure.**

If, within a reasonable time after receiving a bargaining petition, the exclusive representative and the appropriate branch of metropolitan government are unable to reach an agreement on any issue, such issue shall be submitted to mediation and fact-finding; except, that unresolved issues affecting the operational budget of the government must be submitted to mediation and fact-finding at least sixty days prior to the last day for approval of the fiscal budget in the following manner:

A. The exclusive representative will serve notice in writing on the metropolitan mayor that an impasse exists and request mediation and fact-finding to be instituted. The exclusive representative will advise the metropolitan mayor of the union's selection of a person outside of the

union to engage in mediation and fact-finding in the union's behalf.

B. The metropolitan mayor will advise the union of his selection of a person outside of metropolitan government to engage in mediation and fact-finding in metropolitan government's behalf.

C. These two persons so selected shall, within five days therefrom, request the metropolitan vice-mayor to select the third member from the metropolitan council and such councilman shall be the chairman of the metropolitan employees relations board. The three persons so selected shall immediately schedule meetings for the purpose of mediating the dispute and engage in mediation and fact-finding that will be concluded within twenty days therefrom. Their success in mediating the dispute, along with a recommendation for resolution of such dispute and the board's findings, shall be submitted to the appropriate board, commission or metropolitan official for consideration and action at the next regular meeting after receiving such report. If the parties have not resolved the impasse by the last date for approval of the fiscal budget, the appropriate board, commission or the metropolitan mayor shall submit to the metropolitan council a copy of the findings and recommendations of the board together with its recommendations for settling the dispute. The exclusive representative may submit to the metropolitan council its recommendations for settling the dispute. The metropolitan council, through its appropriate committee, shall forthwith conduct a hearing and allow all parties involved to explain their positions, and thereafter the metropolitan council shall take such action as it deems appropriate and fitting. Copies of the board's findings, recommendations and report shall be given to all represented parties and all news media. (Prior code § 32-1-84)

Chapter 3.60

EMPLOYEE AWARD PROGRAMS

Sections:

Article I. Employee Suggestion Awards

3.60.010 Suggestion award program—Established.

3.60.020 Suggestion award board—Established.

3.60.030 Suggestion award board—Powers and duties.

3.60.040 Maximum cash awards—Appropriation item charged.

3.60.050 Positions excluded from receiving suggestion awards.

Article II. Award Program for Recovered Funds

3.60.060 Award program—Established.

3.60.070 Award board—Established—Powers and duties.

3.60.080 Type of award.

3.60.090 Positions excluded from receiving awards.

Article I. Employee Suggestion Awards

3.60.010 Suggestion award program—Established.

There is established an employee suggestion award program for employees and retired employees of the metropolitan government of Nashville and Davidson County. Under this program, cash or honorary awards may be made to employees of the metropolitan government and retired employees of the metropolitan government whose adopted suggestions will result in substantial savings or improvement in operations of the metropolitan government. (Prior code § 2-1-3.8 (a))

3.60.020 Suggestion award board—Established.

There is established an employee suggestion award board which shall be composed of the following members: the director of finance or his representative; the director of personnel or his representative; four members of council, two of whom must be members of the personnel committee and elected by such committee, one of whom must be a member of the budget and finance committee and elected by such committee, and one member to be appointed by the vice-mayor; and one member to be appointed by the vice-mayor upon recommendation of the Nashville Chamber of Commerce. (Amdt. 1 to Ord. 90-1416, 11/20/90; Ord. 90-1416 § 1, 1990: prior code § 2-1-3.8 (b))

3.60.030 Suggestion award board—Powers and duties.

A. It shall be the duty of the board to adopt rules governing its proceedings, to elect a chairman and secretary, to keep permanent and accurate records of its proceedings, to establish criteria for making awards, to adopt rules and regulations to carry out provisions of this article and to approve each award made.

B. In promulgating rules and regulations, the board shall consider the following factors: severity of the present problem, effectiveness of the suggestion offered, probability of occurrence of improvements in metropolitan government operations, and ingenuity of the suggestion. (Prior code § 2-1-3.8 (c))

**3.60.040 Maximum cash awards—
Appropriation item charged.**

A. The maximum cash award shall be limited to ten percent of the first year's estimated savings, or six thousand dollars, whichever is less.

B. Any cash awards approved by the board shall be charged against the appropriation item or items to which estimated savings apply. (Prior code § 2-1-3.8 (e))

**3.60.050 Positions excluded from receiving
suggestion awards.**

In establishing criteria for making awards, the board may exclude certain levels of positions from participation in the program, but in no event shall the following levels of management be eligible to receive cash awards under the program: the mayor's staff, department heads, assistant directors of departments, associate directors of departments, and heads of divisions. (Prior code § 2-1-3.8 (d))

Article II. Award Program for Recovered Funds

3.60.060 Award program—Established.

There is established an award program for employees of the metropolitan government of Nashville and Davidson County. Under this program, awards may be made to employees of the metropolitan government who provide information relative to illegal or inappropriate actions of fellow employees which result in substantial savings or improvement in operations of the metropolitan government. (Prior code § 2-1-3.9 (a))

**3.60.070 Award board—Established—Powers
and duties.**

A. There is established an employee award board which shall be composed of the members of the personnel, public information, human relations, and housing committee of the metropolitan county council.

B. It shall be the duty of the board to adopt rules governing its proceedings, to keep permanent and accurate records of its proceedings, to establish criteria for making awards, to adopt rules and regulations to carry out provisions of this article, and to approve each award made. (Prior code § 2-1-3.9 (b), (c))

3.60.080 Type of award.

A proper testimonial award shall be made to deserving employees which shall be in the form of a United States Savings Bond. (Prior code § 2-1-3.9 (e))

**3.60.090 Positions excluded from receiving
awards.**

In establishing criteria for making awards, the board may exclude certain levels of positions from participation in the program, but in no event shall the following levels of management be eligible to receive awards under the program: the mayor's staff, department heads, assistant directors of departments, associate directors of departments, and heads of divisions. (Prior code § 2-1-3.9 (d))

Chapter 3.64

EMPLOYEE ASSISTANCE PROGRAM

Sections:

**3.64.010 Employee assistance program—Division
of metropolitan health
department.**

**3.64.020 Employees of program—Appointment—
Status as civil service employees.**

**3.64.030 Employee assistance program—Scope—
Availability to whom.**

**3.64.010 Employee assistance program—
Division of metropolitan health
department.**

A. The present functions of the employee assistance program of the metropolitan benefit board are hereby placed as a division in the metropolitan human resources department. The employee assistance program shall be under the direction of the director of the program, who shall report directly to the director of the metropolitan human resources department.

B. All positions and personnel assigned to the employee assistance program at the metropolitan employee benefit board shall be transferred to the metropolitan human resources department as of the effective date of the ordinance codified in this chapter.

C. No other department within the metropolitan government has the authority to create a separate employee assistance program. (Ord. BL2000-292 § 1, 2000; Ord. 94-1056 §§ 2, 3 and 6, 1994)

**3.64.020 Employees of program—
Appointment—Status as civil service
employees.**

The director of the metropolitan human resources department shall appoint all employees, subject to the approval of the civil service commission. All employees of the program shall be civil service employees of the Metropolitan Human Resources Department unless the ordinance creating positions for the program shall provide oth-

erwise. (Ord. BL2000-292 § 1 (part), 2000; Ord. 94-1056 § 4, 1994)

**3.64.030 Employee assistance program—
Scope—Availability to whom.**

It shall be the responsibility of the director of the employee assistance program, along with the director of the metropolitan human resources department, to develop policies and procedures as to the implementation of the employee assistance program. These policies and procedures must be approved by the civil service commission. The educational or counseling programs and issues addressed by the employee assistance program may include chemical or substance abuse, mental or emotional illness, finances, legal issues, marital and family distress, and other personal problems as the director of the employee assistance program, along with the concurrence of the director of the metropolitan human resources department, deems appropriate and that can be implemented within the employee assistance program budget allocation. This confidential program shall be available to all employees of the metropolitan government and their families. Employees of the metropolitan department of police may use the services of the employee assistance program or the police advocate support services (PASS). The police advocate support services is a separate program which is not a part of the employee assistance program. (Ord. BL2000-292 § 1 (part), 2000; Amdt. 1(2) to Ord. 94-1056, 6/22/94; Ord. 94-1056 § 5, 1994)